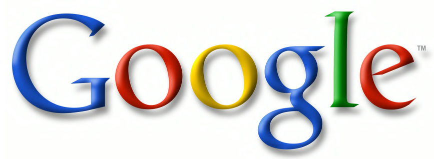

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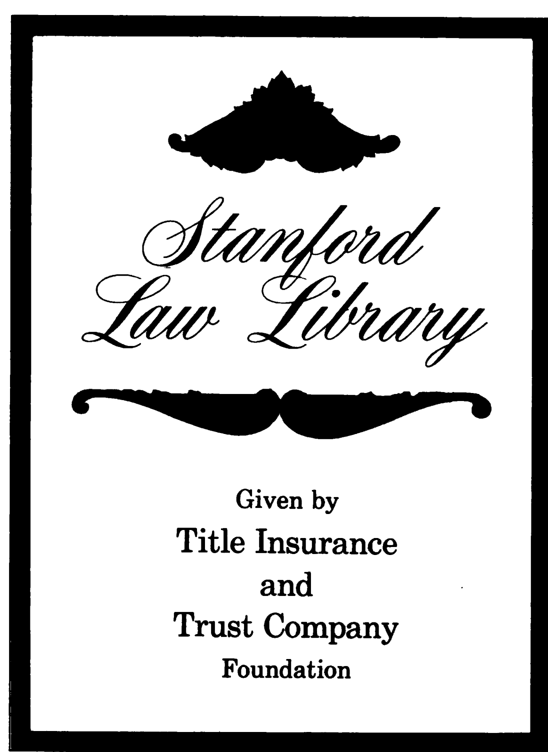
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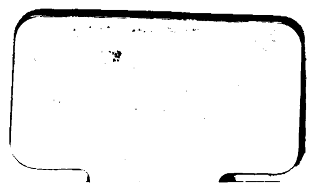

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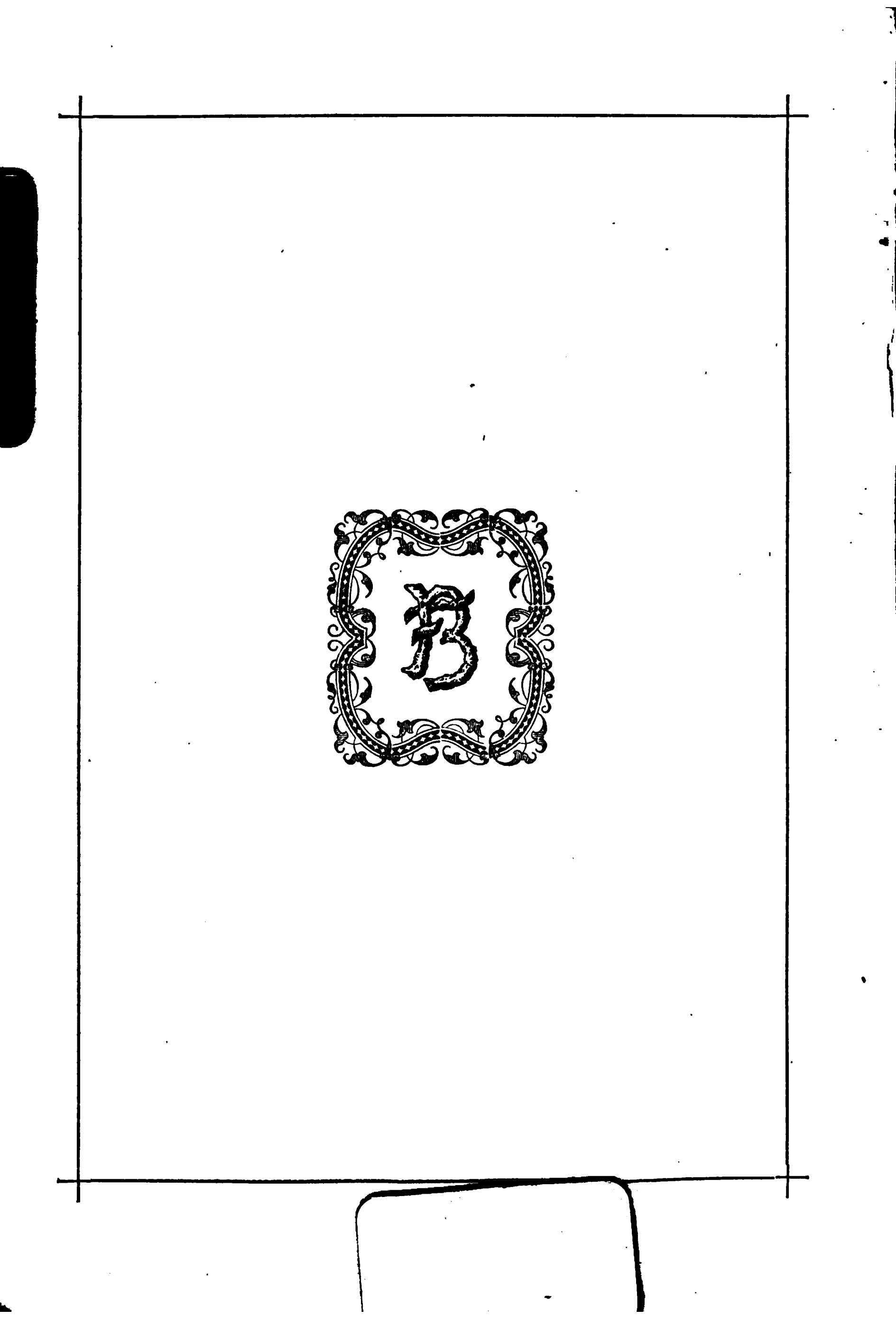
Games, Gaming & Gamesters' Law.



GAMES, GAMING

AND

GAMESTERS' LAW.

BY

FREDERICK BRANDT,

OF THE INNER TEMPLE, BARRISTER-AT-LAW,

Author of "Habet," "Fur and Feathers," "Frank Marland,"
&c. &c.

"*Aleæ rumorem nullo modo expavit, lusitque simpliciter, et palàm oblectamenti causâ, vel talis vel par impar.*" SUETONIUS (De Augusto Imperatore).

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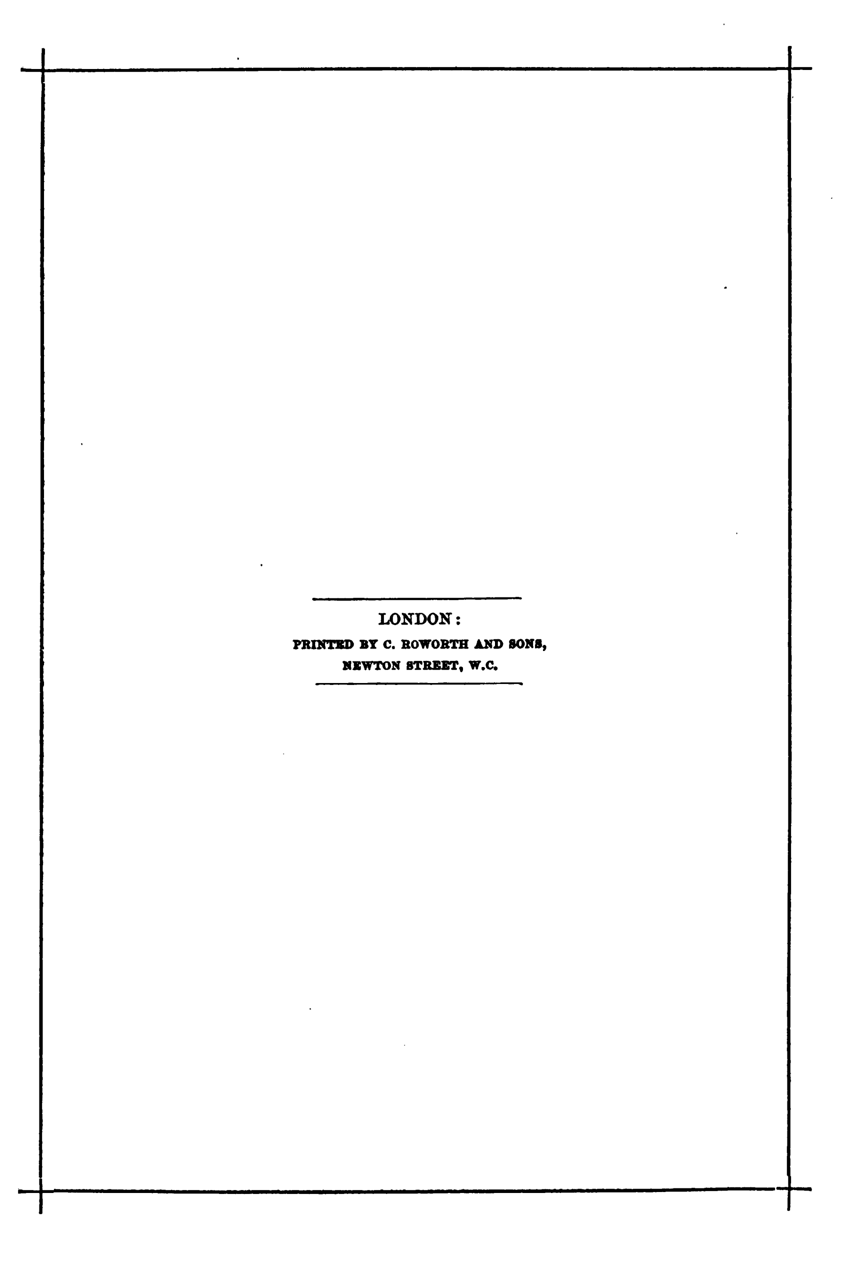

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TO

THE MOST HONORABLE

THE MARQUIS OF WESTMINSTER,

A LIBERAL PATRON AND ENCOURAGER

OF

ALL LAWFUL GAMES, SPORTS AND PASTIMES,

This little Work

IS,

WITH HIS LORDSHIP'S PERMISSION,

DEDICATED.

PREFACE.

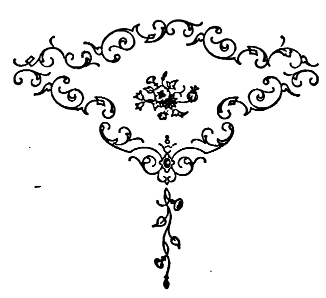
IN the unpretending Volume, to which this is the Preface, I have endeavoured to give a concise history of Games and Gaming, commencing with the period when there was nothing illegal in playing at any game how, where or when you liked. I have shown how, when and why certain games became illegal by statutes passed for purposes and with objects which I point out, how in due course illegal games became legal, and I have wound up my little Book with a summary which will enable my readers to see at a glance what games are now legal and what still remain illegal. With the view of relieving the tediousness inseparable from any work which deals with legal subjects, I have at intervals introduced descriptions of the mode in which games, now obsolete and forgotten, were played, together with incidents and anecdotes con-

nected with the general subject of "GAMES AND GAMING."

I have also written a Chapter on the subject of Lotteries, touched upon Betting, and, in short, tried to make my little Treatise, so far as I am able, instructive to lawyers, though not a law book, and interesting to the general reader, though not strictly coming under the category of a contribution to the, so-called, "light literature" of the day.

FREDERICK BRANDT.

INNER TEMPLE.



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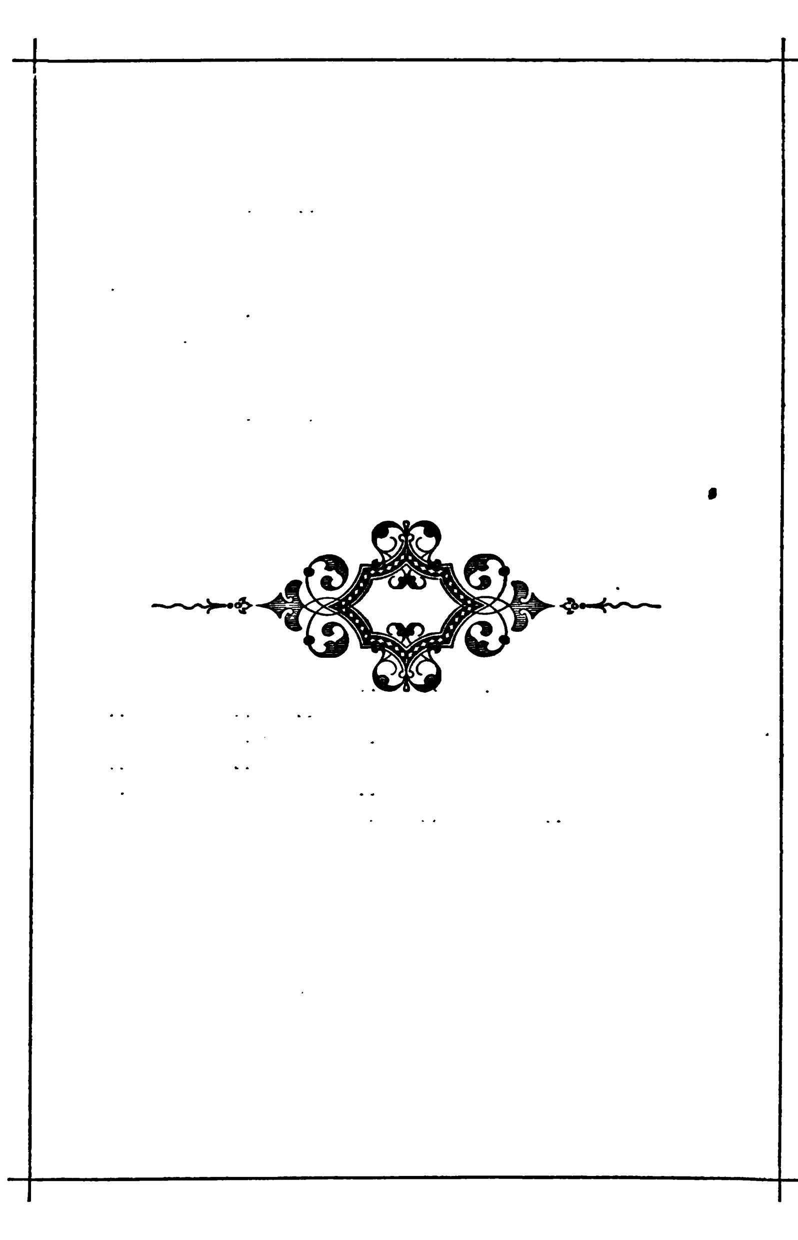


CHAPTER I.

Principally Introductory.

Games, Gaming and Gamesters' Law.

Chapter I.

PRINCIPALLY INTRODUCTORY.

Before the date of the issuing of any royal proclamation, or the passing of any statute prohibiting or regulating the sports and pastimes of our ancestors, all games were perfectly legal at common law, provided they were played fairly and without cheating. This seems to be admitted by all the old writers, and it is amusing to remark the difficulty which they find in assigning causes for the interference of king and parliament with the liberties of the people in this respect. One writer, who published a curious little work in the reign of Queen Anne, says:—"The generality of people are very in-
"clinable to gaming and recreations, especially at some
"stated times in the year, and some are unwarily drawn
"in and imposed on by cheaters, and so lose their money
"*alamaine* (à la main), and have been tricked out of good
"estates, and others have won money fairly and on the
"square by downright gaming and betting." The same author adds, "It's true cards, dice, cockfightings, races,

"and such like games, are allowed by our law duly
"circumstantiated (whatever that may mean), and yet
"they receive but little favour from the law, especially
"when they run into excess."

The notion of classing cockfighting with cards and races seems in our degenerate times singular, to say the least of it; but that amusement, as well as bull, bear and badger baiting, was in vogue, as we shall see, up to a not very remote period.

Our author's reason for the prevalence of gambling is probably sound. He says "It is not easily to be
"accounted for that many persons of good endowments
"and of plentiful estates have been so eager, not to say
"furious, in their gaming and betting. I cannot attri-
"bute it to a principle of mere avarice in many, though in
"most I fear it is so, but rather think the contingency
"of winning and losing and the expectations therefrom
"are diverting. I conceive there would be no pleasure
"properly so called if a man were sure to win always.
"It's the reconciling uncertainty to our desires that creates
"the satisfaction."

One more quotation from my quaint author, for which I make no excuse, and I will proceed with my main work. He commences a chapter, which is in fact an apology for the acts of kings, queens and parliaments, thus—"That
"exercise of the body is expedient and in *some cases*
"necessary, all agree. The physicians are of opinion that
"some recreations are more agreeable to some constitu-
"tions than others, and therefore they prescribe ringing
"to one, shooting to another, and to some bowling, and to

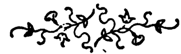
" others shovel boards, &c., to open and dilate such parts
" of the body as are contracted and straitened by viscous
" and tenacious humours. But besides recreations of the
" body there are other pastimes which seem more apt to
" releviate the mind and fancy when the thoughts have
" been fatiguing upon some knotty and tedious problems,
" and have been poring upon τὰ δυσνόητα—difficulties hard
" to be mastered; *then* to succeed with the *mollia tempora,*
" and to bestow some unbent hours in a sociable recrea-
" tion may be very allowable and useful, such as cards,
" dice, draughts, chess, and the like, and I should esteem
" him a wise and temperate man who is induced to these
" recreations by no other consideration or motive than
" either of health of the body, or the sanity and relief of
" the spirits. Now to say of gaming in general that it is
" utterly unlawful and *malum in se* I dare not affirm,
" though some divines do hold divers of the said recrea-
" tions and pastimes to be utterly unlawful, as being
" actions wherein we neither bless God, nor look to
" receive a blessing from Him, nay such as we dare not
" pray to God for a blessing on them, nor ourselves in the
" use thereof."

Statutory restrictions upon games and gaming may be traced from so early a date as the reign of Richard II.; but I hardly think that the church had anything to do with the prohibition of games and gaming which, in a modified degree, began even earlier in our history, though I find it laid down that gaming may be unlawful by reason of the " unreasonableness thereof," as in the case of those " who spent whole nights and part of Sundays in gaming,

"though it be after divine service." "So to frolique it in "gaming and sports in times of public calamity or danger" was held to be in bad taste. I find also that "lawful games "may be followed unlawfully, intemperately, and un- "seasonably, and so the gamesters are as great offenders, "*in foro cœli* at least, as any others. Such are those as "make a calling of gaming and their main business and "employment, and thereby endeavour to get other men's "estates, and venture to lose their own to the ruin of "themselves and their families. The nature of commu- "tative justice requires that when I receive that which is "another man's, I should part with something of my "own that is equivalent, and bears some due proportion "to it."

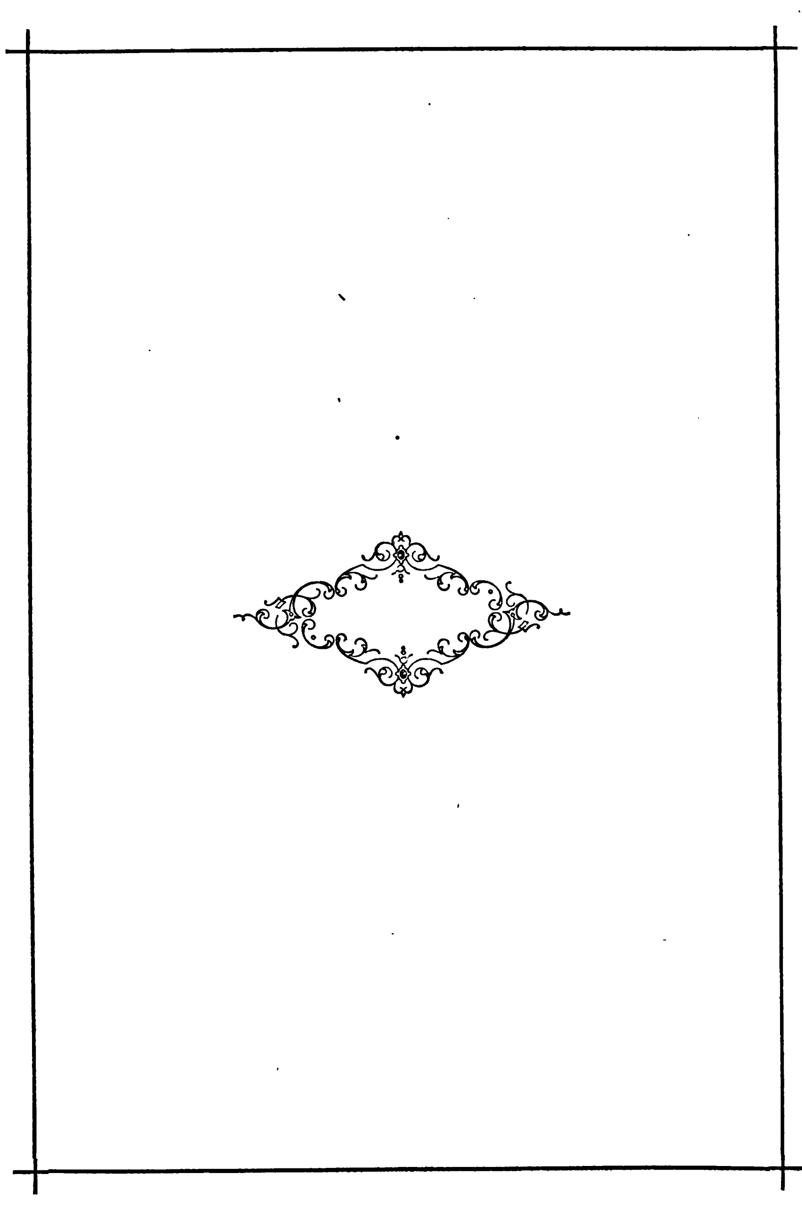
The above quaint passages I quote word for word from the little work to which I have already alluded, and, to say the least of them, they *are* quaint.

After some research, I think I may lay it down as an incontrovertible fact that all games were originally lawful if played fairly, but cheating was illegal at common law, as was also excessive gambling, as I shall, in the course of these papers, show, and I shall, I think, be able to point out the real moving cause to the passing of the statutes to which I shall have to refer.



CHAPTER II.

Of Cheating and Excessive Gaming.



CHAPTER II.

OF CHEATING AND EXCESSIVE GAMING.

IT is perfectly clear from all the authorities that cheating was always looked upon as illegal at common law, and one can easily see why this should be the case, for even in the most uncivilized ages a certain sense of the difference between right and wrong in the abstract prevailed. In a legal point of view, it seems that the victim of a fraud might either recover the money lost by action at law or the cheater might be convicted and punished as a criminal. In support of these two propositions I have ventured to cite verbatim one or two cases, as much for the quaintness of the phraseology and the subtle points taken and argued, as for the intrinsic value which they possess as legal authorities. They come in here out of chronological order, but I know not where I could introduce them more appropriately. The first case is—

"*John Harris* v. *Nicholas Bowden.*

"Action upon the case, because the defendant at D. "enticed the plaintiff to play at dice, at a sport called

" five or nine, intending to deceive him and get his money;
" and he by the defendant's persuasion did play with him
" at the said sport; and the defendant in playing at the
" said sport, delivered to the plaintiff *quosdam talos*
" *veraciter titulatos* (true dice properly marked or spotted)
" to play with; and when the dice came to the hands of
" the defendant, he by practice falsely and fraudulently
" *quosdam alios talos falso et subdole titulatos* (dice
" marked with false and fraudulent spots) *quos numeros*
" *quinque vel novem aliquo jactu unquam attingere*
" *scivisset adhunc et ibidem projecit*, and then played
" with the said false dice (being able to throw five or nine
" whenever he chose), by which the plaintiff lost to the
" defendant divers sums of money amounting to forty-one
" pounds six shillings and eightpence: and the defendant
" falsely and fraudulently, under the colour of getting,
" took and carried away the said money, to his damages
" two hundred marks. The defendant pleaded not guilty,
" and it was found against him; and it was alleged in
" arrest of judgment—1. Exception that the word *talos*
" was no word for dice, *sed non allocatur:* for it is a
" proper word for dice. 2. Exception that the word
" *lucisset* was written with a *c*, which is for shining; but
" the record was viewed, and it was written with an *s*,
" and the plaintiff had judgment."

This queer case is to be found reported in Croke's Reports, in the time of Elizabeth, p. 90.

The objection to the spelling of the Latin word intended to mean "had played" will appear comic to my unprofessional readers, but many similar and quite as ridiculous

points will be found quoted in the books as having been solemnly argued.

The next case decides that,—" If A. intice B. to play " with him at dice, at a play called Passage, upon which " B. plays with him, and when it came to B.'s turn to " play A. delivered true dice with which he should play, " and when it came to the turn of A. himself to play, he " throws with false dice (viz.), such dice as he knew " would run five or six upon every dice, by which he lost " ten pounds. Action on the case lies for this deceit by " B. against A. Hill. 8 Car. 1, B. R. Hurt, &c. Rolle's " Abr. 100."

We now come to a case which points rather to the crime of conspiracy:—

" If two men are common hazardors, and use with false " dice to cheat the Queen's subjects, and they join to- " gether and with false dice deceive J. S. of his money " at play with them, they may be indicted for this, and if " they are found guilty they may be adjudged to stand in " the pillory. 2 Rolle's Abr. 78, Beckingham and Leson's " case. AND THEY DID STAND IN THE PILLORY."

The quaintness of this sentence is very amusing.

" Indictment was brought against one for being a " common player at cards, and defrauding the plaintiff " of 40*s*., not saying *vi et armis. Per curiam:* It is " needless. 2. To say Anglice a trick of cards without a " Latin word, there being none for it, is good enough. " 1 Keb., 652. Spencer and Huson."

In the case of the *King* against *Hauscomb and Primate,* North prayed, on conviction for cheating with false

dice, that the court would set a fine in the absence of the parties, who else would make over their estates before appearance, and so defraud the king. The Court inclined that this may be done on prayer for the king, but not on the prayer of the party. M. 22 Car. 2. B.R.

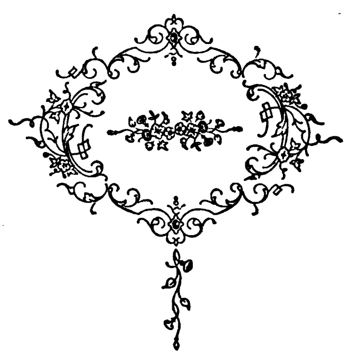
Cheating then being illegal at common law, excessive gambling—that is, playing for immoderately large sums of money—was also unlawful. This proposition is, I think, quite clear and incontrovertible, not only for the curious reasons assigned in my first chapter, but also because it is obvious that in the framing of what is called our common law (if indeed it ever was framed) a certain sense of what is right influenced the minds of the framers. Still it must strike everyone who thinks for himself that many difficulties were likely to arise in settling what were immoderately large sums. This question no doubt would depend on circumstances. What might be in one case a large amount might in another be a comparatively trifling sum. In order to remedy this defect, an Act was in the reign of Charles II. passed to define the extent to which gambling and betting might legally be practised. To this statute I shall have to refer at some length in its proper place; meanwhile, I will conclude this chapter with an abstract of a case which is to be found in Vernon's Reports (1 Vern. 489; 2 Vern. 70), and which illustrates the view which the courts took at that period in a very amusing way:—

Sir Bazil Firebrasse v. *Brett.*

It seems that Mr. Brett and Sir William Russell dined one day with Sir Bazil Firebrasse. After dinner,

and as we may easily conceive, after having drunk what in these degenerate days would be considered an inordinate quantity of wine, they "fell in to play." When they commenced Brett and Sir William had not above eight pieces between them, by no means an unusual state of things with gamblers; but by some means or other they won from their host 900*l.*, which was paid to Brett in cash. Sir Bazil, who was probably not over sober at the time, brought down a bag of guineas, containing about 1,500*l.* in specie. This Mr. Brett very soon won, and having secured the money, was leaving the house of his entertainer, when the latter, assisted by his servants, seized upon the treasure and took it from him. Sir Bazil Firebrasse thinking, and with some show of reason that he had been unfairly dealt with, obtained an information against Mr. Brett for playing with false dice, but in the end the defendant was acquitted, and brought an action of trespass against Sir Bazil for taking the bag of money from him by force. The Lord Chancellor granted an injunction to stay these proceedings at law, although all charges of fraud contained in the bill were fully denied. His lordship said that he thought 1,500*l.* (besides 900*l.*) was a very exorbitant sum for a man to lose in one evening, and that if he could he would prevent such occurrences. He cited the case of *Sir Cecil Bishopp* v. *Sir John Staples, tempore* Chief Justice Hale, in which case the learned judge observed that "these "great wagers (it was a very heavy wager on a foot "race) proceeded from avarice, and were founded in cor- "ruption." The Lord Chancellor then added that, if

such discouragement was given to gaming at common law, it ought much more to be done in a court of equity. A distinction or difference which I confess, as a common lawyer, I cannot see.



CHAPTER III.

How, Why and When certain Games became Illegal.

Chapter III.

HOW, WHY AND WHEN CERTAIN GAMES BECAME ILLEGAL.

So far as I can find or see, there cannot be and never was anything immoral or vicious in the abstract in any of our English games or sports by the statutes to which I shall in the course of this work refer declared to be illegal; unless, indeed, cockfighting, bull, bear and badger baiting, and other cruel and savage amusements can be termed "games or sports." It is curious to note that it has been laid down, that the bishop cannot refuse to induct a clergyman presented to a living merely because he is a player at unlawful games or a haunter of taverns; because, as Sir Simon Degge says, "each of these games is not *malum* "*in se*, but only *malum prohibitum*." Degge's P. C.

Such being the case, and having now shown that they were, up to a certain time, perfectly legal at common law, I now come to the question why and how did some become unlawful?

The why appears to me tolerably clear from the wording of a proclamation made in the ninth year of the reign of King Edward III., which commanded the exercise of archery and artillery, and prohibited the exercise of casting of stones, bars, hand and footballs, cockfighting and other vain sports, "*alios vanos ludos*." The king

no doubt found that his loving subjects preferred peaceful games to the noble sports of war, and so, not out of regard to their morals, but simply with a view to the recruiting of his army, he issued this proclamation. But, to use the words of an old treatise, "This was of none effect until "divers of them (the games) were prohibited, under penal- "ties by Act of Parliament." The archery alluded to was no doubt practised with the long bow, and the artillery of those days with the cross bow, or some modification of that weapon. In the Old Testament, 1 Samuel xx. 40, we find the passage, "And Jonathan gave his artillery "unto his lad." This passage clearly points to some such weapon as the bow, either cross or long. The Acts of Parliament said to have been so effective were 12 Rich. II. c. 8; 11 Henry IV. c. 4; 12 Edward IV. c. 3, and 11 Henry VII. c. 2.

By the provisions of the latter statute, "No apprentice "or servant in husbandry, labourer or servant artificer shall "play at tables from the 10th of January next coming, "but only for meat and drink, nor at tennis, claysh, dice, "cards, bowls or any other unlawful games in no wise out "of Christmas; and in Christmas to play only at the "dwelling-house of the said master, or where the master "of any servant is present, upon pain of imprisonment by "the space of a day in the stocks openly."

This Act was followed by others passed in the reign of King Henry VIII., of blessed memory, one of which, as we shall see, far outstripped the others in its severity. By this monarch many regulations were made, affecting games and gaming, all having for their object the encou-

ragement of archery. In the year 1511, it was enacted that "all sorts of men, under the age of 40 years, should "have bows and arrows and use shooting;" and that "un-"lawful games should not be used"—(hand and foot ball for instance and casting of stones and bars). But these were succeeded by a much more comprehensive Act, some of the provisions of which are in force at the present time. It was passed in the year 1541, and appears in the statute book as 33 Henry VIII. c. 9. It professes to have been passed on a petition from the bowmen and others concerned in the making of implements of archery. They complain that "many and sundry new and crafty games "and plays, as logetting in the fields, slidethrift, other-"wise called shove-groat, had caused the decay of "archery;" and so to this grievous state of things a remedy was supplied in the form of this statute, of which some of the sections are so amusingly worded that I make no apology for reproducing portions of them *verbatim*. It is called "An Act for mayntenance of artillery and "debarring of unlawful games." Section 2 provides "that no manner of person or persons of what degree, "quality, or condition soever he or they be, from the "Feast of the Nativity of St. John Baptist, now next "coming, by himself, factor, deputy, servant, or other "person, shall for his or their gain, lucre, or living, keep, "have, hold, occupy, exercise, or maintain any common "house, alley, or place of dicing, table or carding, or any "other manner of game prohibited by any estatute hereto-"fore made, or any unlawful new game now invented "or made, or any other new unlawful game hereafter to

" be invented, found, had, or made, upon pain to forfeit " and pay for every day keeping, having, or maintaining, " or suffering any such game to be had, kept, executed, " played, or maintained within any such house, garden, " alley, or any other place, contrary to the form or effect " of this statute, 40*s.*;" and also " every person using and " haunting any of the said houses and plays, and there " playing, to forfeit for every time so doing 6*s.* 8*d.*" Section 14 authorizes magistrates to enter suspected houses, and to repress unlawful games and punish offenders. Section 16 contains a very curious provision. It runs thus:—" That no manner of artificer or craftsman " of any handicraft or occupation, husbandman, appren- " tice, labourer, servant at husbandry, journeyman, or ser- " vant of artificer, mariners, fishermen, watermen, or any " serving man shall, from the said Feast of the Nativity " of St. John Baptist, play at the tables, tennis, dice, " cards, bowls, clash, coyting, logating, or any other " unlawful game *out of Christmas,* under the pain of 20*s.* " to be forfeit for every time."

Under certain restrictions and subject to certain rules, a person might, on giving security, sue for what was called a " Placard," having got which he might have gaming in his house. A master, too, might grant a license to his servant to play with him or any other gentleman in his house or in his presence. A nobleman, or one who had an income of 100*l.* a-year, might license his servants to play amongst themselves at his houses, gardens, and orchards, as provided by sections 13, 22, and 23.

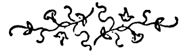
With reference to the placards above alluded to, I may here remark, that in the reign of Philip and Mary they had become very inconvenient. It appears that "by reason of divers and sundry licenses theretofore granted "to divers persons as well within the city of London and "the suburbs, as elsewhere, for keeping of houses, gardens, and places for bowling, tennis, dicing, white and "black, making and marring, and other unlawful games, "many unlawful assemblies, conventicles, seditions, and "conspiracies, had been daily and secretly practised, and "robberies and other misdemeanours had been committed "by idle and misruled people resorting there." To remedy these evils an Act was passed in the year 1555, "to avoid "divers licenses for houses where unlawful games be used," and all placards, licenses, or grants were made void. In the preamble of a statute passed in the second year of King George II., this Act of Henry VIII. is called "a good and profitable statute." We may, in these days, well doubt how far an Act which throws impediments in the way of the manly games of quoits and tennis can be justly called profitable, but as the object of the king and his advisers was not the moral or religious welfare of his subjects, and as the passing of this measure was prompted by a desire to make the nation more warlike and the people better marksmen, we may feel perfectly sure that had cricket been invented at that period it would have been classed with the prohibited games.

Such being the law with respect to these unlawful games, it is tolerably clear that it was enforced, though I do not find many reports of convictions which took

place under the statutes, until a later period, when the laws relating to gaming were extended and made more stringent. However, the following case is cited by Dalton, and I reproduce it verbatim as a specimen of the short and comprehensive mode of reporting in those days prevalent, and worthy of imitation in our own.

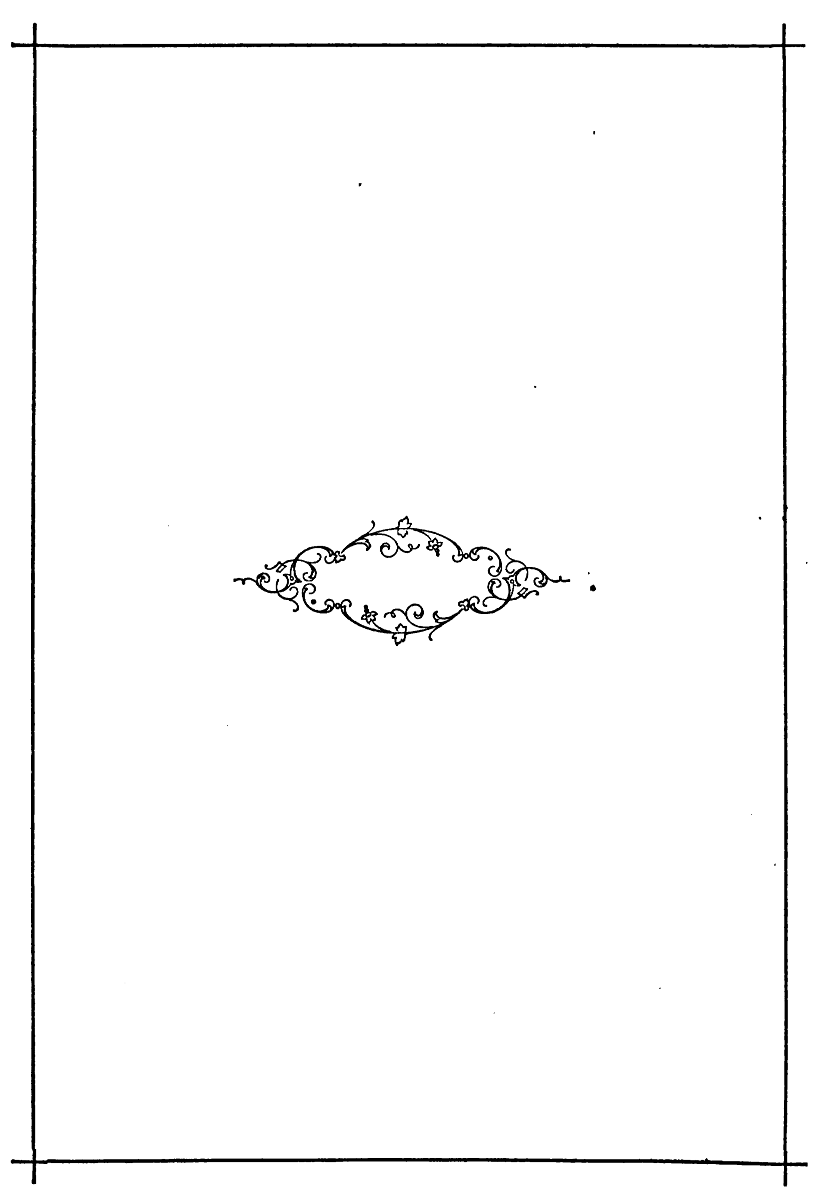
"At the Lent Assizes, at Stafford, 29 Eliz., before "Manwood, Chief Baron, and Windham, justices of "assize there, divers were taken by L——, one of the "justices of peace there, and were indicted thereof, and "he that kept the house where they played also, and he "that kept the house was fined at 5*l*., and every one that "played 20*s*., and because they were present in court "they were committed to prison till they paid their fines, "and there were above 20 of them that played in the said "house at one time."

Some of the games prohibited by the statute of Henry VIII. having now become obsolete, it may be interesting to my readers to learn what they were and how played. I therefore purpose, in my next chapter, to give them the result of my investigations on the subject, as a partial relief from the tedium of the dry consideration of the laws which made them illegal.



CHAPTER IV.

A short Description of the Mode in which Games made Illegal by Statute were Played.



CHAPTER IV.

A SHORT DESCRIPTION OF THE MODE IN WHICH GAMES MADE ILLEGAL BY STATUTE WERE PLAYED.

OF the games prohibited by the statute of Henry VIII., those played with dice and cards are still familiar to us, and by many excellent people considered in the abstract, and however, wherever and whenever played, wicked as well as illegal. It would of course be quite impossible to give any description of the numerous games which may be played with these ingenious implements. I therefore decline to attempt a task which Hoyle and other writers have undertaken "*tant bien que mal.*"

Quoits and tennis were played in much the same manner in the time of Henry VIII. as they are now. Of bowls properly so called, however, we have only one form, but it is clear that there were many ways of bowling when the statute prohibiting the game was passed. So long ago as the reign of Edward IV. half bowls were illegal; and I confess if the description given of the mode in which this game was played be correct, I wonder it ever became popular, for a more difficult pastime I can scarcely conceive. Half-bowl, called also rolly-polly, though certainly not the rolly-polly adverted to later on in this work, was

played with one-half of a heavy wooden bowl. Twelve conical pins were placed round a circle about two feet and a-half in diameter, one was in the middle, and two others outside and behind the circle in a line with the middle pin. This middle pin had four balls, and if knocked down counted four; the next to it in the circle, in a line with the two outside pins, had three balls on it, and counted three; the next outside had two balls and counted two; and the rest counted one. So far all is plain sailing enough, but in order to count anything at all the player had to cast his half-bowl over the circle and round the pin farthest off him before any of the pins were knocked down. How on earth he managed to do this I am at a loss to know; and, indeed, Strutt, who mentions the game, says it required considerable practice to make a good player.

Considering the fact that crowds of spectators are in the present day attracted to Lord's as spectators of a cricket match, we need not be surprised to find that in former times some pleasure was derived from watching the performers in games at bowls. The King of Hungary in the old ballad, "The Squyer of low degree," promises that for the amusement of his royal daughter—

> "An hundred knightes truly told
> "Shall playe with bowles in alleys colde."

Pleasant for the "knightes," and one would fancy not very agreeable to the "ladye" herself, excepting in summer, and that assuredly not an English summer.

It is curious to remark that in one form of bowls, of

which an illustration occurs in "Strutt's Games and Pas-"times," the player drives the ball with a mallet through an arch, just as in croquet, proving, if there were need of proof, that there is nothing new under the sun.

After some research and consideration I have come to the conclusion that closh, clash, kayles and closhcayles mentioned in the statute of Henry VIII. are varieties of the same game, and that logating, loggeting and loggets are in the same class of sports, but that in some particulars they differ materially in the manner in which they were played.

Kayles, written also cayles and keiles, most probably the still existent "quilles" of the French, was played with pins, and was the origin of nine pins, though from the old engravings which are to be found in "Strutt" the kayles do not seem to have been limited to any particular number. In one representation of the game there are six, and in another eight pins, differing also in shape, but this possibly was dependent on the fancy of the makers. In both cases one is taller than the others, and answered, no doubt, to the king pin of the modern game. The arrangement of the pins in the game of kayles was totally different from that of nine pins, the former being placed in one row, the latter on a square frame in three rows. In the game of kayles a club or stick was thrown at the pins instead of a bowl; hence it was sometimes called "club kayles." Sometimes, but most likely only by boys, who could not afford more expensive implements, bones were used for playing at kayles.

In an old play published in the reign of Queen Eliza-

beth, and called "The longer thou livest the more fool "thou art," a stupid fellow boasts of his skill "at scales, "and the playing with a sheepe's joynte."

We come now to the game of CLOSH or *clash*, and this seems to have been very similar to kayles—indeed the only difference was that a bowl was used for throwing at the pins instead of a club or truncheon. Probably it differed but slightly from the nine pins or skittles of the present day, and I may remark that the kayle pins were called sometimes kittlepins, and as we have seen in the quotation above that kayles was also called scayles, or scales, the transition from kittlepins to skittlepins and skittles is very easy.

In "The Merry Milkmaid of Islington," a play published in 1680, one of the characters threatens his adversary thus:—"I'll cleave you from the skull to the twist, "and make nine skittles of thy bones."

LOGGATTS or loggetts was a pastime analogous to kales and closh, but played chiefly by boys and rustics, who substituted bones for pins. In one section of the statute, "loggeting in the fields" is mentioned amongst the "new "and crafty games and plays" intended to be forbidden, but it is clear that it was also played in a place prepared for the purpose. Blount says:—"A logget-ground, like "a skittle-ground, is strewed with ashes, but is more ex-"tensive. A bowl, much larger than the jack of the "game of bowls, is thrown first. The pins which are "called 'loggets,' are much thinner and lighter at one "extremity than the other. The bowl being first thrown "the players take the pins up by the thinner and lighter

"end, and fling them towards the bowl, and in such a "manner that the pins may once turn round in the air, "and slide with the thinner extremity foremost towards "the bowl. The pins are about one or two and twenty "inches long."

In the play of "Hamlet" the following line occurs:—"Did these bones cost no more the breeding but to play "at loggats with them?" and Sir Thomas Hanmer, who was Speaker in the House of Commons for thirty years, and who published an edition of Shakspere, explains the word thus:—"Loggats is the ancient name of a play or "game, which is one of the unlawful games enumerated "in the 33rd statute of Henry VIII. It is the same "which is now called kittlepins, in which boys often "make use of bones instead of wooden pins, throwing at "them with another bone instead of bowling."

Here I think a few words may be introduced on the subject of BILLIARDS, probably one of the most popular games of the present day, and it is somewhat curious that so seductive an amusement was not prohibited as materially interfering with artillery. It seems clear that in some form or other this game was known and practised at or about this period; and by the term "this period" I mean the reign of King Henry VIII., who was so anxious for the military education of his people.

Spenser, in "Mother Hubbard's Tales," has these lines—

> "With dice, with cards, with billiards much unfit,
> "And shuttlecocks misseeming manly wit."

Shakspere mentions the game in "Antony and Cleo-

"patra;" and the Queen's invitation to Charmian, "Let's "to billiards," meets our eye daily in the advertisements of a billiard table-maker or keeper, I forget which. In his "Celebration of Charis" Ben Jonson says—

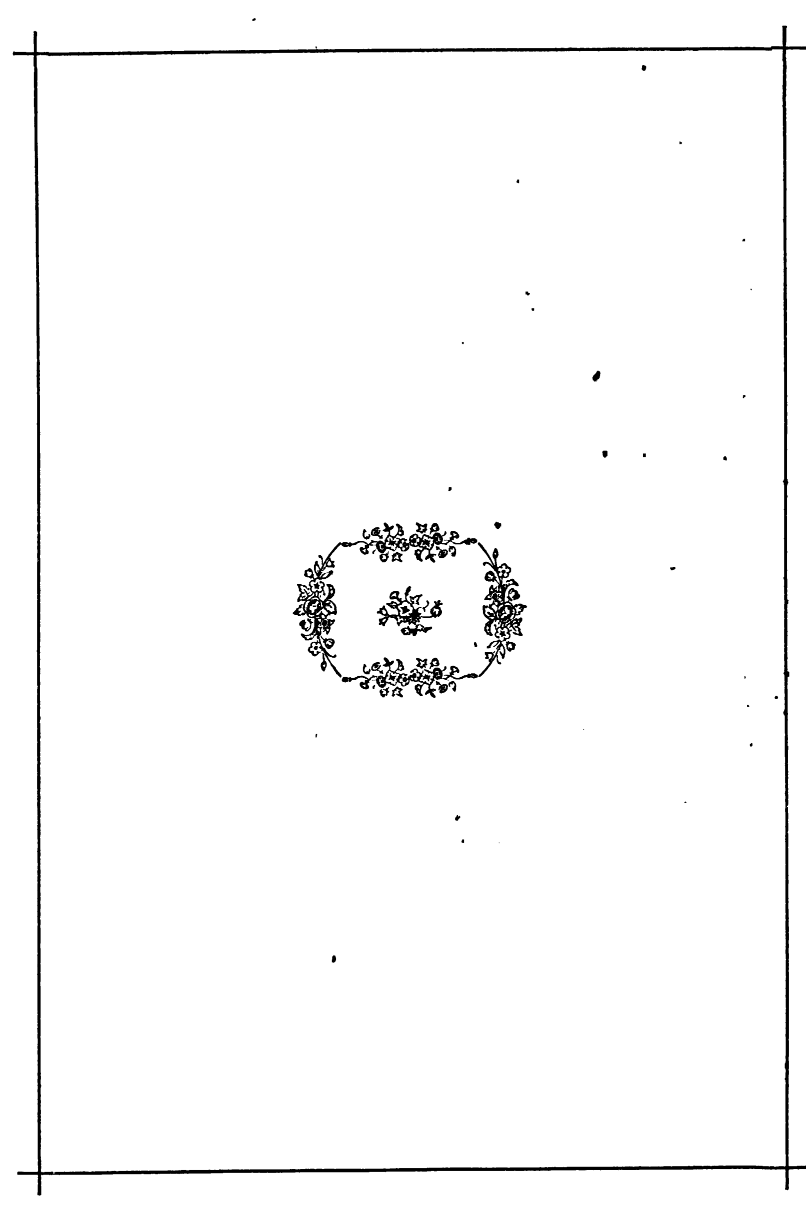
> "Even nose and cheek withal
> "Smooth as is the billiard ball."

Burton mentions the game in his "Anatomy of Melan-"choly," as also do Locke and Boyle. Gayton, who annotated "Don Quixote" in 1654, speaks of billiards as one of the attractions of taverns. It is possible that billiards was included in the term bowls, and that it originally was played on the ground; indeed, we have at the present time a game called lawn billiards, and although I never saw it played, materials for it are daily advertised by toy-dealers and others as being on sale.

The derivation of the word is no doubt *pila*, a ball, and it is one of those games which may be said rather to have developed itself than to have been invented by any one in particular. The French, however, claim the merit of the invention, and assert that the discoverer was a certain Henrique de Vigne in the reign of Charles IX., 1560 to 1574. As I have before stated, on the authority of Strutt, a game very like croquet was played in very early times. The ball was driven through a hoop—and I believe with a mallet round a peg or cone, fixed—and this hoop and pin formed a portion of the materials for playing billiards on a table for a short period. In 1679, Evelyn saw at the Portuguese ambassador's a table fitted up in this way, with more than the usual number of pockets. He says that the

balls were struck with the small end of the cue, which was shod with brass or silver. For a long time the mace was used, but it is now quite exploded, even by ladies, who we can easily see have a far better opportunity of displaying a pretty hand, when "making a bridge" is essential to their play. For this we have the authority of no less a person than Miss Braddon:—"Clarissa learned to elevate "her pretty hand into the approved form of bridge, and "acquired some acquaintance with the mysteries of can-"nons and pockets." The Lovels of Arden, vol. 1, p. 145. Some exception may possibly be taken to the tautological construction of the passage in which "acquired acquaint-"ance" occurs: but there it is.

Old billiard tables were made of different shapes, both oval and square, and one of the earliest games was played with divers erections called "passes," "forts," "reserved "forts," "grand forts," "batteries," &c., and assumed a very intricate and combative form, How billiards is played at the present time, and how popular and scientific a game it is, is well known; and I have here alluded to it because it is highly probable that, under the name of bowls, it was an illegal game. Tennis and bowls having been made illegal by King Henry VIII., that amiable monarch—as we find from contemporaneous records—proceeded to build for his own use at Whitehall "divers fair tennis courts, bowling "alleys, and a cock-pit;" and it is curious to learn that keeping a cock-pit has been held to be an infringement of the very statute passed in the reign of this monarch for the suppression of gaming and the "mayntenance of "artillery." Dalton, c. 46.



CHAPTER V.

How, Why and When certain other Games became Illegal.

Chapter V.

HOW, WHY AND WHEN CERTAIN OTHER GAMES BECAME ILLEGAL.

For several reigns the law relating to games and gaming remained unaltered. In the year 1618 James I. issued a proclamation, or, as I find it termed, a declaration, that the undermentioned recreations should be lawful, viz., dancing of men or women, archery, leaping, vaulting, May games, Whitsun ales, morris dances, setting up May poles and other sports therewith used, and commanded that no such honest mirth or recreation should be forbidden to his subjects upon Sunday or holyday *after divine service ended.* This precious permission was confirmed by Charles I., who allowed further the feasts of dedications of churches, commonly called wakes, and all manly exercises to be there used with all freedom. Then came the days of the Puritans, and we are not surprised to find a learned writer in the reign of Queen Anne giving his opinion on these very sensible and reasonable declarations, as follows: "*Tempora mutantur.* Our Gracious Queen and our "Reverend Bishops will not patronise any such custom or "allowance; and that the ignorant people were misled and "thought such pastimes innocent sort of mirth appears by "this story of a Welsh parson—John, a poor boy, was

" bred up at school, and being a plodding lad at his books
" used to assist some gentlemen's sons that went to the
" same school. Afterwards John took a trip to the uni-
" versity, and got a degree and orders. He in process of
" time, upon some occasion, comes for London in a tattered
" gown. One day a gentleman that had gone to school
" with him meets him, and knew him. 'Jack,' saith the
" gentleman, 'I am glad to see thee; how dost do?'
" 'I thank you, noble squire,' replied Jack. The gentle-
" man invited him to the tavern, and after some discourse
" of their school and former conversation, the gentleman
" asked him where he lived. Jack answered 'In Wales.'
" The gentleman asked him if he were married. The
" parson replied he was, and that he had a wife and seven
" children. Then the gentleman enquired of the value
" of his benefice. The parson answered, 'It was worth
" 9*l.* a-year.' 'Pugh!' quoth the gentleman, 'how canst
" thou maintain thy wife and children with that?' 'Oh,
" sir,' quoth Jack, shrugging his shoulders, 'we live by
" the churchyard; my wife sells ale, and I keep a bear,
" and after evening service my parishioners, being so kind
" to bring their dogs to church, I bring out my bear and
" bait him, and for about two hours we are at it—heave
" and shove staff and tail till we are all very hot and
" thirsty, and then we step in to our Joan and drink
" stoutly of her nut brown ale; and I protest, squire
" (saith he), we make a very pretty business of it.' "

I presume that bear baiting came under the category of
" May games, Whitsun ales, or other sports."

Feasts of dedications of churches, or wakes, are still kept

up in the North of England with undiminished splendour, and there is a scandalous story believed by many which relates that the churchwardens of a certain parish, being in want of a bear to be baited at their wakes, sold the church bible for the purpose of raising funds for the purchase of the animal. In any endeavour to ascertain the truth or falsehood of this tale we get into this dilemma—either bibles were much dearer or bears were much cheaper in those days than they are now. Still it is interesting to mark how much in a comparatively short space *tempora* really *mutantur*.

In treating of the doings and legislation of James I., so far as they relate to our subject, it is but fair to record, that although partial to many games and other sports, he was anxious that they should be indulged in with becoming decorum. Accordingly, he enacted in the third year of his reign, that—

" If any shall in stage-play, interludes, show, or May-" game, jestingly and profanely speak of or use the holy " name of God, or Christ Jesus, or the Holy Trinity, he " shall forfeit 10*s*. every time to the king and to the " informer."

In the reign of Charles II., an Act was passed to the full as important as that of Henry VIII., but it is curious to note how by degrees the legislature became more anxious for the personal and moral welfare of the subject, and how the reasons given for passing Acts changed. Henry VIII. was anxious to make his subjects warlike. Charles II., as might be expected, wished to reform their morals, and to prevent them being " lewd and dissolute." Accordingly

the latter monarch passed "An Act against deceitful, "disorderly, and excessive gaming" (16 Car. II. c. 7), which recites that "All lawful games and exercises "should not be otherwise used than as innocent and "moderate recreations, and not as constant trades or "callings to gain a living or make unlawful advantage "thereby, and that by the immoderate use of them many "mischiefs and inconveniences arise, to the maintaining "and encouraging of sundry idle, loose, and disorderly "persons in their dishonest, lewd, and dissolute course "of life, and to the circumventing, deceiving, couzening, "and debauching of many of the younger sort, both of "the nobility and gentry, and others, to the loss of their "precious time and the utter ruin of their estates and "fortunes, and withdrawing them from noble and laudable "employments and exercises." By this Act, persons winning by fraud or cheating at cards, dice, tables, tennis, bowles, kittles, shovel-board, cock-fightings, horse-races, dog matches, foot-races, and all games and pastimes, were to forfeit treble the sum or value of the money so won.

Every person losing above 100*l.*, on ticket or credit, at these or any other games and pastimes, either by bearing a part in them or betting, was discharged from paying any part of the money; all securities given for it were to be void, and the winner was to forfeit treble the sum above 100*l.* so won. In a previous chapter I have stated that excessive gaming was illegal at common law, but it must have been difficult to decide how far a man might go without excess. What to one might be a large sum to another might be a trifling amount. This question was

by the above statute set at rest, but it was the parent of much litigation, of which, however, I will only give one instance in the form of a report, which will amuse my readers both from the peculiarity of the language and the subtlety of the points raised in it. It is the case of—

"*Pope* v. *St. Leiger.*"

In this case there was a wager of 100 guineas, not pounds, and although 100 guineas passed, as was admitted, for 107*l.* 10*s.*, it was urged that legally they were mere medals and only worth 20*s.* each, there never having been any proclamation to make them pass.

It is thus reported, in the quaint language of the period:—

" This case was argued in B. R. on Error, 7 William
" and Mary. Broadrick (who was counsel for the plaintiff)
" demands one hundred guineas valoris 107*l.* 10*s.* in B. C.
" Defendant pleads that when the wager was laid he and
" the plaintiff were at play at tables at a game called
" backgammon, and pleads the statute of gaming, and
" avers this was for money won at play, and being for
" above 100*l.* was void by the statute. To which the
" plaintiff demurs and judgment was given for him in
" B. C., and we bring Error. And

" 1.—I think debt will not lye on this wager. And

" 2.—The plaintiff ought to declare of so many guineas,
" &c., Yelv. 80, 2 Cr. 86, 1 Lev. 41. Those cases I agree,
" but here a guinea is English money, of which the court
" takes notice, and in such cases it is never declared *ad*
" *valentiam,* Latch. 84. A guinea in law is no more than

" 20s., and so you lately adjudged in this court in the
" case between Harrison and Byron, in which case it was
" adjudged (1) that the court judicially takes notice of a
" guinea; (2) that the legal value of it is but 20s., though
" by consent it may pass for more. So that this judg-
" ment is erroneous, 1 Sand. 316, the deed being entered
" on record, is parcel of the plea, and if by that it appears
" that the plaintiff has no cause of action he cannot have
" judgment, though the defendant has misbehaved himself.
" Hob. 149, 56. And therefore our admittance of the
" value of the guinea will not hurt us, for we need not to
" have mentioned this variance from the deed, and this
" was a point not touched in the Common Pleas. Then,
" *non constat* in that case (*in casu illo*), for it is not
" mentioned before, and the money is not to be paid by
" the deed before the groom porter has given his judgment
" in that case; then our plea is good, for we plead the
" statute of gaming, and that being at backgammon, these
" hundred guineas were wagered on that game, and so not
" for ready money, it is void by the statute against our
" own deed, 2 Cro. 253, Mo. 641, 2 Sid. 88, and the de-
" murrer hath confessed this; and though the averment is
" not good, yet it appears by the declaration to be within
" the words and intention of the statute of gaming, for the
" money is above 100*l.* and is lost on tickets; and it ap-
" pears by the declaration how it was lost, that it was at
" backgammon, and that the money was won at play at
" that game, though the judgment of the groom porter was
" at another time; and the statute of gaming would be of
" little use if it is not extended by by-bets, but only to the

" gaming itself, and this Act hath always been construed
" liberally; and therefore where a man lost 80*l.* at one
" day, and then the parties agreed to play at another day,
" when 80*l.* more was lost, this was adjudged to be within
" the statute and to be but one loss, and that statute was
" made to prevent great mischiefs. If any of the points
" are for us, then I pray that the judgment may be re-
" versed.

" *Holt*, C. J.—Do you make laying a wager to be
" within the statute of gaming? It is true they were at
" play when the wager was laid.

" *Eyre*, C. J.—Suppose that the wager had been, that
" the tables were made of Brazeel, had this been within
" the statute? Certainly no more shall this.

" *Holt*, C. J.—Guineas were coined at the Mint for 20*s.*
" only, and there was never any proclamation to make them
" pass, though there was one to take the twenty shilling
" pieces. It is true by consent they may pass for more
" than 20*s.*, but legally no more is to be demanded for
" them than 20*s.* The guinea was coined according to the
" 20*s.* piece. We call them guineas by agreement, but
" how can we take notice of what value they are? If the
" plaintiff had declared of 20*s.* pieces we must judicially
" have taken notice of them. Then suppose this should
" be taken for gaming, as there was a case in my Lord
" Hale's time, the condition of a bond to perform cove-
" nants (which were) to run an horse race, &c. *Vide supra*
" Edgbury and Rosindale.

" *Pemberton*, Serjeant (*arguendo*).—It is plain that this
" is not within the statute of gaming, for to make it so it

" must be betted on the hand of the plaintiff or defendant,
" but this wager was laid on a collateral matter on the right
" of play, which is not within the Act. As to the declaration the writing produced maintains it, for it is the
" very same with the declaration. Then we lay that the
" 100 guineas are valoris of 107*l.* 10*s.*, of which you must
" take notice, for it is a coin by itself, and is not any noted
" piece of the kingdom, as the twenty shilling pieces are,
" for there is no proclamation to make them pass, but a
" guinea is in nature of a medal and is more like a foreign
" coin, and is much of that nature, and there are several
" declarations of so many dollars valoris so much, and yet
" you know the value of a dollar, and this is like that
" which you cannot take notice of, because it is not the
" current coin of England.

" *Holt*, C. J.—Brother, do you think that it is not
" high treason to counterfeit guineas? Certainly it is;
" the indictment shall not run for counterfeiting of guineas,
" but of so many pieces of 20*s.* value. A guinea is the
" current coin of the kingdom, and we are to take notice
" of it. The guineas are after the proportion of Carolus's,
" that is 16*d.* weight less to the value of 20*s.* Only the
" question is, if we can take notice of the allegation of the
" value of guineas, because there are other sorts of them,
" as 5*l.* guineas. Where you declare on a foreign coin
" you must declare in detinet only, and not in the debet,
" and so in an action of debt for goods, as corn, &c.,
" though debt lies on the contract, yet it must be in the
" detinet only. Its always so unless the action of debt be
" for English money.

" At another day—

" If an action of debt is brought for the value of English
" money as it may then, it is to be laid in the debet and
" detinet, but if it be for a foreign coin, or goods, as for a
" quarter of corn, and the plaintiff shows the value, as he
" must, there it must be in the detinet.

" *Holt*, C. J.—Now here these are called guineas,
" which, if it is a coin not known in our law we must take
" them to be as goods.

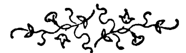
" *Eyre*, Justice—Then the defendant confesseth the
" value of them as the plaintiff has alleged.

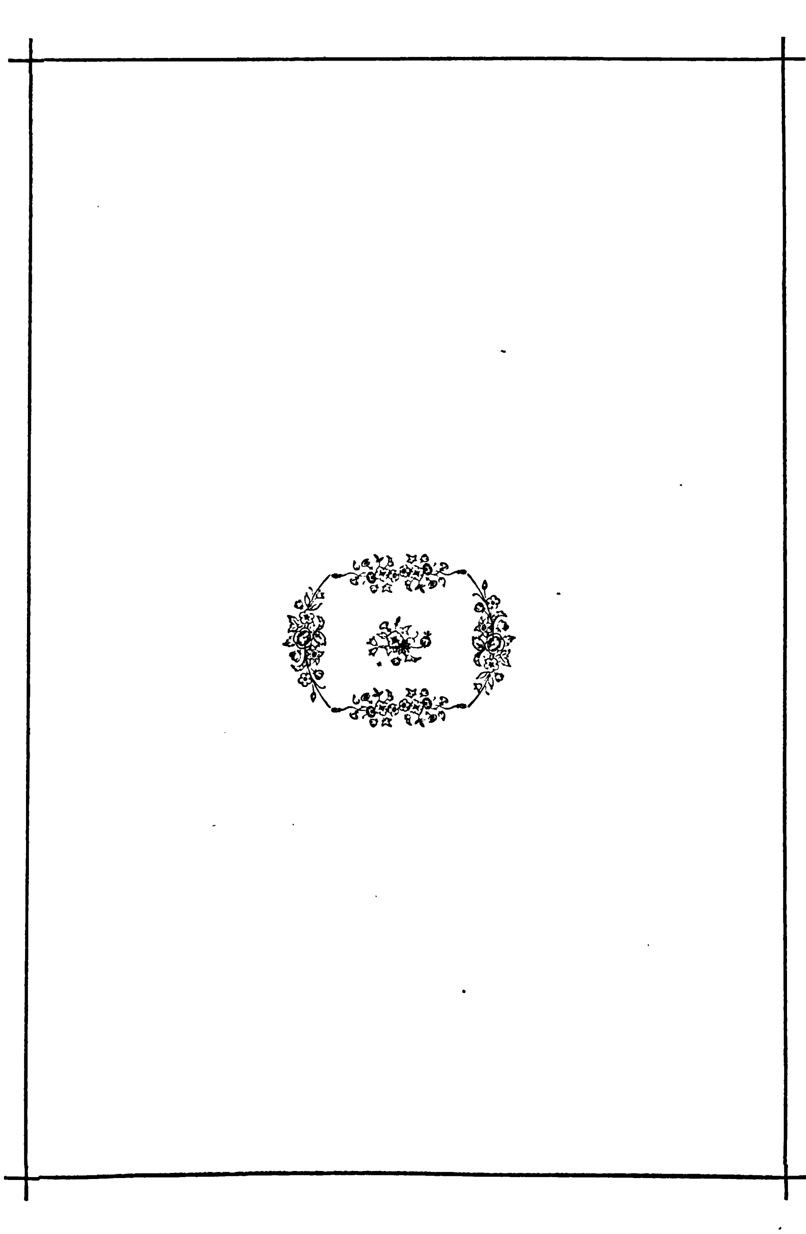
" *Holt*, C. J.—But it is 100 *nummos aureos* (*Anglice*)
" guineas. What is that, it is very uncertain. Indeed
" if it had been 100 *pecias auri vocatas* guineas it had
" been well enough.

" At another day the judgment in C. B. was reversed."

A very satisfactory conclusion, inasmuch as, so far as I can see, no point was finally decided.

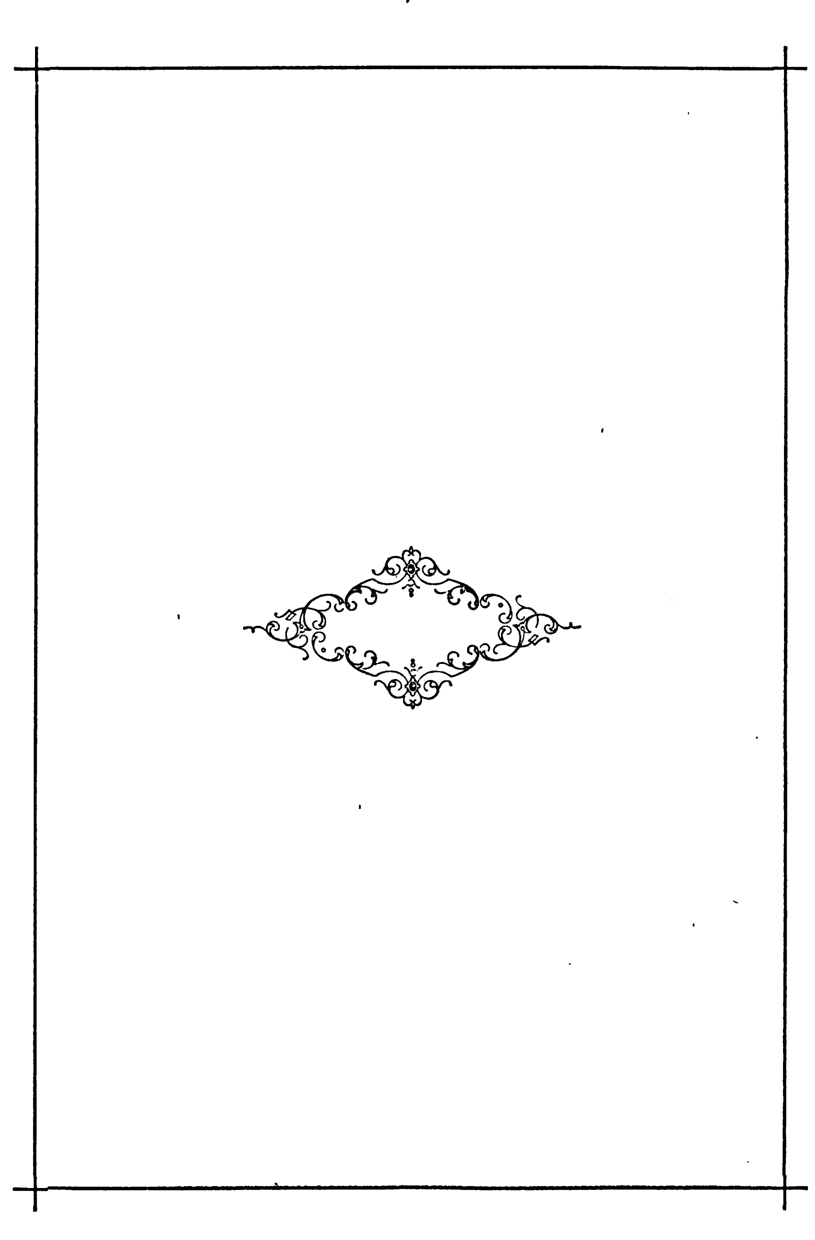
I make no apology for printing the above case, for, although somewhat unintelligible even to the modern pleader, it is curious as an illustration of the style of reporting prevalent about 200 years ago.





CHAPTER VI.

Of Games and Gaming in the Reign of George the Second.



Chapter VI.

OF GAMES AND GAMING IN THE REIGN OF GEORGE II.

In the reigns of William III., Anne and George I. lotteries seem to have become common, and several Acts were passed to prohibit them. Here, however, I may remark that although lotteries were, by Act of Parliament, made utterly illegal, they were carried on from a very early period up to the year 1826 with very great vigour by means of royal permissions in the form of letters-patent. As we have seen gaming, though prohibited to the οι πολλοι, was practised, and legally so, in royal palaces; and lotteries, though alleged by many statutes to be most injurious and destructive to the morals, were permitted whenever the King, the Queen, or the Parliament, thought that money was more wanted than morals; or perhaps, to put the matter more clearly, when the Royal exchequer ran somewhat low and required to be replenished at the expense of—well, no matter what. There is, however, so much interesting lore to be derived from the subject, that I have given a chapter to lotteries; but as the materials for such chapter would, if introduced here, interfere with

the chronological arrangement of my main work, I have preferred postponing the subject, and have merely noticed the above facts at this point casually.

The next Act bearing upon my subject is 2 Geo. II. c. 28, which is intituled, " An Act (amongst other things) " for more effectual debarring of unlawful games."

The 9th section runs as follows :—

" Whereas a good and profitable statute is made in " the three-and-twentieth year of the reign of King Henry " the Eighth (among other things) for the debarring of " unlawful games. And whereas by the said statute no " power is given unto the justices of the peace to demand " and take from persons found playing contrary to law any " other security than their own recognizances, that they or " any of them shall not, from henceforth, use such unlawful " games, unless such persons are found playing contrary " to law upon the view of one or more justice or justices of " the peace; for remedy thereof be it further enacted that " where it shall be proved upon the oath of two or more " credible witnesses before any justice or justices of the " peace, as well as where such justice or justices shall find " upon his or their own view, that any person or persons " have or hath used or exercised any unlawful game con- " trary to the said statute, the said justice or justices shall " have full power and authority to commit all and every " such offender and offenders to prison without bail or " mainprize, unless and until such offender or offenders " shall enter into one or more recognizance or recogni- " zances, with sureties or without, at the discretion of the " said justice or justices of the peace, that he or they re-

"spectively shall not thenceforth play at or use any such "unlawful game."

This statute speaks for itself, but of course it applies only to games which were unlawful at the time it was passed.

We now come to a really important land-mark in the history of gaming legislation. I mean 12 George II. c. 28. It was avowedly passed to render more effectual the Acts alluded to at the commencement of this chapter; it dealt however with more than it professes to deal with. The first section prohibits lotteries under certain heavy penalties (200*l.* for each offence), and it contains a very full description of the nature of lotteries and the mode in which they were carried on, which is, however, too long to be transcribed here, but as it is well worth the perusal of those who are curious on the subject, it will be found in the chapter on lotteries hereafter introduced. The directions as to the distribution of the fines are also worthy of notice. They run thus:—"Which said for- "feitures shall go one-third to the informer, and the "remaining two-thirds to the use of the poor of the parish "where such offence shall be committed, excepting the "said two-thirds of such forfeitures which shall be in- "curred by and recovered upon any person or persons "within the *city of Bath*, which said two-thirds shall "go, and be applied to, and for, the use and benefit "of the poor residing within the hospital or infirmary "lately erected for the use and benefit of poor persons "resorting to the said city for the benefit of the mineral "waters." By the second section of the Act the games

of the Ace of Hearts, Pharaoh, Basset, and Hazard are declared to be games or lotteries by cards or dice, and the penalty to be incurred by "the adventurers" was fixed at 50*l.* All sales by lottery were declared void, and the lands, goods, articles, &c., the subjects of a game or lottery, forfeited; but by sect. 10 it was enacted "That "nothing in this Act, or in any former Acts, against gam-"ing shall extend to prevent or hinder any person or "persons from gaming or playing *at any of the games* in "this or any of the former Acts mentioned *within any of* "*His Majesty's royal palaces*, where his Majesty, his "heirs, and successors shall then reside."

This clause refers to the custom which prevailed up to a comparatively recent date of "playing for the benefit of "the groom porter." Gambling was perfectly legal if it took place under the roof of the palace of the Sovereign, and we constantly read in books of a century or so old of "play at the groom porter's."

The games prohibited by this statute, viz., Ace of Hearts, Pharaoh, Basset, and Hazard, were clearly games with either dice or cards, and any minute description of the mode in which they were played would not be interesting to my readers.

Ace of Hearts was called also bone ace. Pharaoh, spelt also faro, was a popular game in France, for we read in old novels of reduced gentlewomen adding to their incomes by keeping a faro table, to which the high play permitted is said to have attracted a goodly company of ladies and gentlemen, amongst whom might be found a few adventurers and *chevaliers d'industrie.*

In Bohn's Handbook of Games, I find a long account of the mode in which Faro, Pharo, Pharaoh, or Pharaon is played, and to this work my readers may refer; to me the account is utterly unintelligible.

I next come to Basset, which Bohn, in his Handbook, says is like Faro. It is said by Dr. Johnson to have been invented at Venice. It was a very fashionable game towards the close of the seventeenth century, and is alluded to by Dennis, an old writer, in the following passage: "Gamesters would no more blaspheme, and Lady Dab-"cheek's Basset bank would be broke."

In Evelyn's diary under the date January 25, 1685, is the following entry, which, as alluding to the game of Basset, may be interesting here and not inappropriate to my subject:—

"I was witness of the king (Charles II., of course) "sitting and toying with his concubines, Portsmouth, "Cleveland, Mazarine, &c. A French boy singing love "songs in that glorious gallery (Whitehall), while about "twenty of the great courtiers were at BASSET round a "large table; a bank of at least 2,000*l.* in gold before "them. SIX DAYS AFTER ALL WAS IN THE DUST."

Not quite all, but at any rate the body of a worthless and contemptible king.

Hazard was played with dice, and both Hoyle and Bohn profess to describe the game. I regret to say that I am obliged to make the same observation on the description of Hazard which I made on the description of Faro.

The following passage occurs in one of Swift's works :—
" The duke playing at hazard, held in a great many
" hands together, and drew a huge heap of gold."

This is, I think, all I have to say about games prohibited up to this period.

The next statute against gaming is 13th Geo. II. c. 19, and is entitled " An Act to restrain and prevent the exces-
" sive increase of horse races, and for amending an Act
" made in the last sessions of parliament, entitled 'An
" Act for the more effectual preventing of excessive and
" deceitful gaming.' " With that portion of it which relates to the restraint of horse racing we have here nothing to do; but by the 9th section, which recites that " a
" certain game called *passage* is now daily practised to
" the ruin and impoverishment of his majesty's subjects,"
it is enacted that " the said game of passage, and all games
" invented, or to be invented, with one or more die or
" dice, or with any engine or device in the nature of dice,
" having one or more figures or numbers thereon (*back-*
" *gammon* and games played with the backgammon tables
" only excepted), are and shall be deemed games or lot-
" teries by dice, and shall be within the provisions of the
" Act before alluded to, 12th Geo. II. c. 28, and the
" penalties and forfeitures provided for under that statute
" are to be inflicted on all infringing the 13th Geo. II.
" c. 19."

With respect to the game of Passage, it seems clear that from the phraseology of the statute it was played with dice. It was probably a very pleasant and attractive game,

otherwise this statute would not have rendered the indulgence in it so penal.

We now come to the 18th Geo. II. c. 34, which was also passed for the avowed purpose of restraining excessive horse racing. By this statute the game of roulet or roly-poly is denounced. The wording of the first section is amusing. It runs thus :—

" Whereas, notwithstanding the many good and whole-
" some laws now in being for preventing excessive and
" deceitful gaming many persons of ill-fame and reputa-
" tion, who have no visible means of subsistence do keep
" houses, &c., for playing, &c., by means whereof divers
" young and unwary persons and others are drawn in to
" lose the greatest part *and sometimes all their substance;*
" and it frequently happens that they are thereby reduced
" to the utmost necessities, and betake themselves to the
" most wicked courses, which end in their utter ruin.
" And whereas a certain pernicious game called roulet or
" roly-poly is daily practised," &c. Roulet or roly-poly is then placed in the same category with lotteries, passage, and the rest, and it is made illegal to play at that game excepting in his majesty's palaces in which he is actually residing.

With respect to the game of Roulet, or Roly-poly, I do not think that it could have been the modern game of roulette, notwithstanding the similarity of the name, and for this reason. In the statute it is called " roulet or roly-
" poly, *or any other game with cards or dice.*" It seems therefore clear that the roulet against which these statutory

thunders were launched was a game with cards or dice, most probably the latter. Clearly it cannot be the modern game of roulette; nor can it be the game of roly-poly, said by Strutt to be a game with bowls.

In the course of my researches for the purpose of compiling this little work, I came upon some very curious passages in the "Gentleman's Magazine or Monthly Intel- "ligencer" for May, 1731, which show pretty accurately what George II. and his family thought of the intrinsic sinfulness of gaming, and we also learn that what is wicked in a subject is lawful and even laudable in a king. They run as follows:—

"On Twelfth day the royal family appeared in the "collars of their respective orders, attended divine service, "and in the evening played at hazard for the benefit of "the groom porter, and 'twas said the King won 600 "guineas, the Queen 360, Princess Amelia 20, Princess "Caroline 10, the Earl of Portman and Duke of Grafton "several thousands."

Oddly enough, we find that on the same night "Mr. "Sharpless, high constable of Holborn division, with "several of his petty constables, searched a notorious "gaming house behind Gray's Inn Walks, but the game- "sters having previous notice all fled, except the master "of the house, who was apprehended, and bound in a re- "cognizance of 200*l.* penalty, pursuant to the statute "33 Henry VIII."

The following is a list of officers established in the most notorious gaming houses. We give it in the peculiar

phraseology of the time, and from the same source, viz., "The Gentleman's Magazine":—

"First, there is a commissioner, always a proprietor, "who looks in of a night, and the week's account is audited "by him and two others of the proprietors.

"Second, a director, who superintends the room.

"Third, an operator, who deals the cards at a cheating "game called faro.

"Fourth, two croupees, who watch the cards and gather "the money for the bank.

"Fifth, two puffs, who have money given them to "decoy others to play.

"Sixth, a clerk, who is a check upon the puffs to see "that they sink none of the money that is given them "to play with.

"Seventh, a squib is a puff of lower rank, who serves "at half salary whilst he is learning to deal.

"Eighth, a flasher, to swear how often the bank has "been stript.

"Ninth, a dunner, who goes about to recover money "lost at play.

"Tenth, a waiter, to fill out wine, snuff candles, and "attend in the gaming room.

"Eleventh, an attorney, a Newgate solicitor (*sic*).

"Twelfth, a captain, who is to fight a gentleman who "is peevish for losing his money.

"Thirteenth, an usher, who lights gentlemen up and "down stairs and gives the word to the porter.

"Fourteenth, a porter, who is generally a soldier of the "Foot Guards.

"Fifteenth, an orderly man, who walks up and down "the outside of the door to give notice to the porter and "alarm the house at the approach of the constables.

"Sixteenth, a runner, who is to get intelligence of the "justices' meeting.

"Seventeenth, link boys, coachmen, drawers, or others "who bring the first intelligence of the justices' meetings, "or of the constables being out at half-a-guinea reward.

"Eighteenth, common bail, affidavit men, ruffians, "bravoes, assassins, *cum multis aliis*."

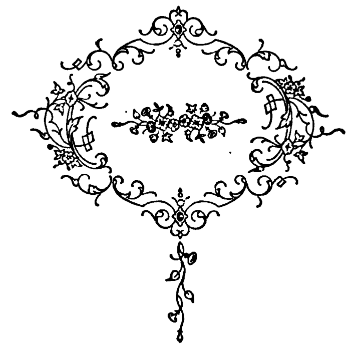
As a wind-up to this chapter, I will just glance at the first licensing Act, which will bring me to the end of the reign of George II. It is 25 Geo. II. c. 36, and the preamble of this statute, like those of most of our old statutes, is very quaint and curious; it runs thus:—"Whereas the "multitude of places of entertainment for the lower sort "of people is another great cause of thefts and robberies, "as they are thereby tempted to spend their small sub-"stance in riotous pleasures, and in consequence are put "to unlawful methods of supplying their wants and re-"newing their pleasures." The Act then proceeds, "In "order, therefore, to prevent the said temptation to thefts "and robberies, and to correct as far as may be the habits "of idleness which are become too general over the whole "kingdom, and are productive of much mischief and in-"convenience, be it enacted that any house, room, garden, "or other place, kept for public dancing, music, or other "entertainment of the like kind in the cities of London and "Westminster, or within twenty miles thereof, without "a license, had for that purpose from the last preceding

"Michaelmas quarter sessions of the peace, &c., shall be "deemed a disorderly house or place." The Act then provides for the infliction of certain pains and penalties upon the keepers of such disorderly houses and the keepers of gaming houses, and sect. 8 runs as follows:—"And "whereas by reason of the many subtle and crafty contrivances of persons keeping bawdy houses (our ancestors were troubled with no mock modesty, and called "a spade a spade boldly), gaming houses, or other disorderly houses, it is difficult to prove who is the real "owner or keeper thereof, by which reasons many notorious offenders have escaped punishment, be it enacted "that any person who shall at any time hereafter appear, "act, or behave him or herself as master or mistress, or "as the person having the care, government, or management of any bawdy house, gaming house, or other disorderly house, shall be deemed and taken to be the "keeper thereof, and shall be liable to be prosecuted and "punished as such, though not in fact the real owner or "keeper."

It will be observed that although in the preamble of this Act gaming houses are not mentioned, yet in the penal clauses they are classed with bawdy houses and disorderly houses, and it is clear that no license could be granted to a place dedicated to gaming.

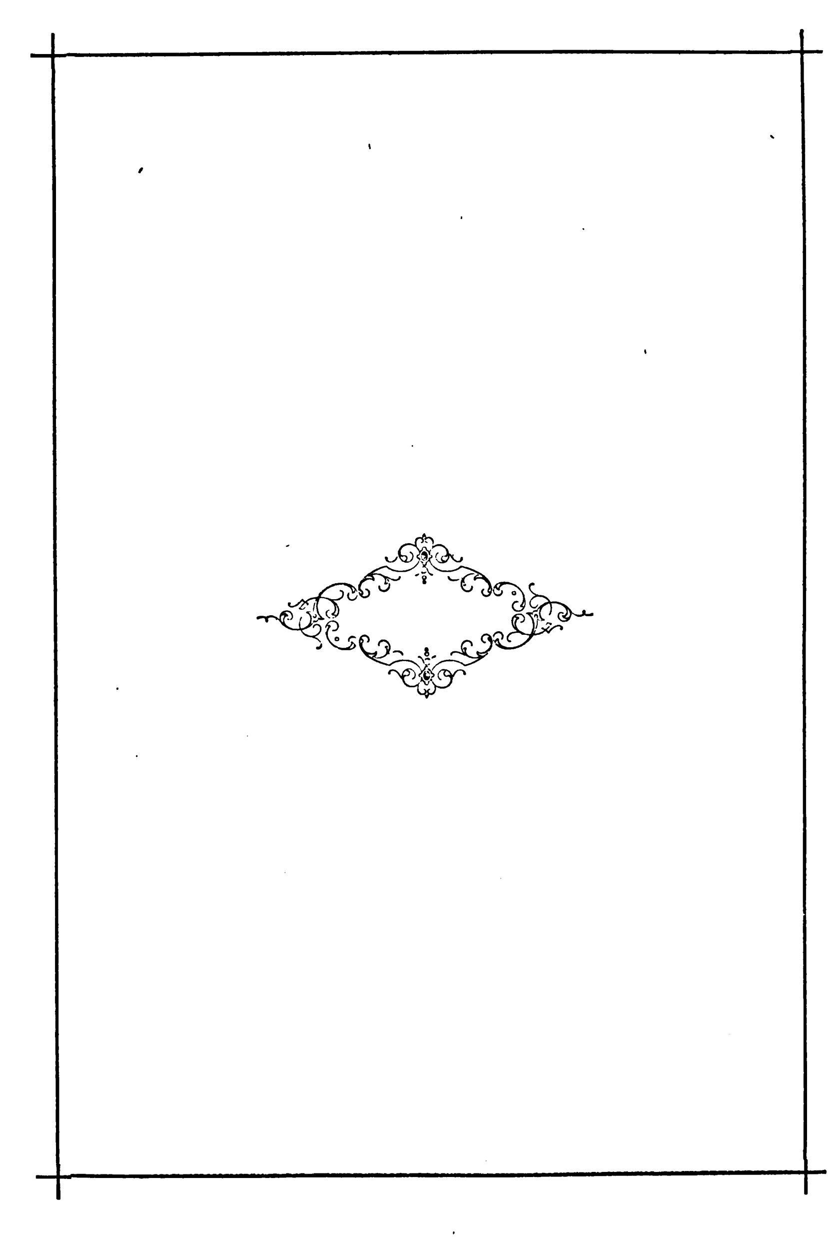
With reference to this Act I may remark that it was decided (*R.* v. *Rogier*, 1 B. & C. 272), that "keeping "and maintaining a common gaming house, and for lucre "and gain causing and procuring evil-disposed and idle

" persons to come there to play *rouge et noir*, and per-
" mitting such persons to play at such game for large
" sums of money," is an offence indictable at common
law.



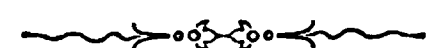
CHAPTER VII.

Of Games and Gaming in the Reign of George the Fourth, and down to the present Time.



Chapter VII.

OF GAMES AND GAMING IN THE REIGN OF GEORGE IV., AND DOWN TO THE PRESENT TIME.



It is a somewhat curious fact that the laws relating to games and gaming remained *in statu quo* throughout the long reign of George III., at least I have not been able to find that any material alteration took place by statute or otherwise. Very little also was done in the ensuing reign, and the only Act to which I shall refer is, 5 Geo. IV. c. 83. This statute is entitled "An Act for the punish-" ment of idle and disorderly persons, and rogues and vaga-" bonds in that part of Great Britain called England."

At first sight one would wonder what this Act can have to do with games and gaming; but it cannot be denied that there is something of a Bohemian nature in our subject, and that the gulf between the aristocratic hazard and the plebeian pitch and toss is neither very wide nor very deep. Their predecessors having debarred our "swells" from the games of pharaoh, basset, ace of hearts, and dice, our middle classes from loggats, roly-poly, and clash-coyles, the Parliament of the good and virtuous King George IV. determined to make a raid upon the lowest order of gamesters and loose fish. Accordingly, by

sect. 4, it is enacted that "Every person pretending or
"professing to tell fortunes or using any subtle craft,
"means, or device, by palmistry or otherwise, to deceive
"and impose upon any of his majesty's subjects; every
"person wandering abroad and lodging in any barn or
"outhouse, or in any deserted or unoccupied building,
"or in the open air, or under a tent, or in any cart
"or waggon, not having any visible means of subsistence,
"and not giving a good account of himself or herself;
"every person playing or betting in any street, road,
"highway, or other open and public place at or with
"any table or instrument of gaming at any game or pre-
"tended game of chance, shall be deemed a rogue and
"vagabond within the true intent and meaning of this
"Act, and it shall be lawful for any justice of the peace to
"commit such offender to the house of correction," &c.

This is the Act which made it an indictable offence to have in one's possession any picklock, key, crowjack, bit, or other implement, with intent feloniously to enter any house, warehouse, stable, &c., and the being armed with gun, pistol, cutlass, hanger, bludgeon, &c., with intent to commit a felonious act.

During the remainder of the reign of King George IV. no other Act was passed to which I need refer. In the next reign an Act 5 & 6 Will. IV. c. 59, was passed, prohibiting cockfighting, bear-baiting and other cruel games and amusements, if they can properly be so designated, and a very important measure was adopted for the purpose of amending the law relating to securities given for considerations arising out of gaming, usurious and

illegal transactions: however, the Acts passed in the present reign are so comprehensive, that I am satisfied that I may spare my readers the consideration of the intervening statutes, and pass at once to the 8 & 9 Vict. c. 109, the most important legislative measure on the subject which has been passed.

Extraordinary as it may seem, in the year of grace 1845—that is, just twenty-six years ago—it was illegal for any person to play at bowls, quoits, tennis, or several other games of skill, in any public alley, court, or ground, constructed for the purpose; and it was also illegal for any artificer, servant, apprentice, husbandman, and so on through a long list of what may be termed compendiously the working classes, to play at the above and at a number of other games out of Christmas anywhere or in any place whatsoever. A landed proprietor or a lord might have his own private tennis court, quoiting ground, or bowling green, and therein play to his heart's content; and I find, on the authority of several old writers, that at one period no gentleman's or nobleman's mansion was considered complete without a bowling green; but your mere tradesman, serf, or vassal, was not permitted to indulge in any of these amusements. The object of these restrictions, however, as I have before said, was not the suppression of vice or the prevention of crime, or immorality of any sort or kind whatever, but "the mayntenance of artillery;" and the Legislature of Henry VIII. thought—how justly I cannot say—that by rendering the favourite amusements of the people unlawful they would be driven to shooting at the butts with bows and arrows through the sheer impossibility

of indulging in any other kind of recreation. In the year 1845, however, the absurdity of prohibiting games of skill, and compelling people to use bows and arrows, seems to have struck our legislators. Accordingly the Act 8 & 9 Vict. c. 109, was passed, and it did far more than legalise quoits and tennis, as we shall see.

It begins thus:—"Whereas the laws heretofore made "in restraint of unlawful gaming have been found of no "avail to prevent the mischiefs which may happen there-"from, and also apply to sundry games of skill from "which the like mischief cannot arise, be it enacted that "so much of an act passed in the thirty-third year of the "reign of Henry VIII. intituled 'The bill for maintain-"ing artillery and the debarring of unlawful games,' "whereby any game of mere skill—such as bowling, "coyting, closhcayles, half bowl, tennis, or the like – is "declared an unlawful game, or which enacts any penalty "for playing at such game of skill, or which enacts any "penalty for lacking bows or arrows, or for not making "or continuing butts, or which regulates the making, "selling, or using of bows and arrows, &c., &c., shall be "repealed." It then proceeds to repeal so much of the said Act as makes it lawful for every master, &c., to license his servants to play in accordance with the provision of the old Act.

By the second section is defined what shall be sufficient evidence that a house is a common gaming house. The third section enables justices to issue their warrant authorizing constables, &c., to enter suspected houses; and by the fourth section certain penalties are inflicted on owners

and keepers of gaming houses, and bankers and croupiers acting in any manner in the keeping or conducting of a gaming house. Proof of actual gaming for money is not necessary to support a conviction, and the commissioners of police may authorize superintendents and constables to enter gaming houses, to seize instruments of gaming, and to take into custody all persons found therein. Sects. 7, 8, and 9, contain certain provisions for the search after gaming instruments, the evidence of gaming, and the indemnity of witnesses; and by the 10th, 11th, 12th and 13th justices are empowered to grant billiard licenses at the usual licensing sessions under certain restrictions. By the 15th section several statutes and portions of statutes relating to gaming are repealed, and notably that of Anne, which rendered it penal to win or lose at play, or by betting, at any one time the sum or value of 10*l.*, or within the space of twenty-four hours the sum or value of 20*l.* The seventeenth section is a very important one, for it makes cheating at play, which was always an offence at common law, punishable in the same manner as obtaining money by false pretences. The 18th section effected a most sweeping and beneficial change in the state of the law, for it rendered all contracts by way of gaming or wagering null and void. Hitherto all kinds of puzzling questions were wont to arise in our courts as to the legality of wagers and bets, and the valuable time of both judges and juries was occupied in deciding such questions, to the great detriment of the interests of legitimate suitors. All these are now set at rest for ever (at least I hope so). You may bet as much as you like, and on any subject whatever, but

you must trust to the honour of the man with whom you bet for the payment of the stake if you win, and he must in like manner trust to your good faith if he should be successful. So anxious have our legislators been to sweep away all semblance of an action on a wager that feigned issues by which, under the fiction of a bet, questions of title to property and goods were determined are, by another section of this statute, entirely abolished. It is, however, provided "That this enactment, 8 & 9 Vict. c. 109, shall "not be deemed to apply to any subscription or contribu- "tion, or agreement to subscribe or contribute for or "towards any plate, prize, or sum of money to be awarded "to the winner or winners of any lawful game, sport, pas- "time, or exercise."

The mode in which wagers were disposed of in our courts of law was somewhat curious. The action was brought on a supposed contract, which may be stated thus: —"A. asserts that such an event will occur or has occurred. "B. denies such assertion, and then A. promises B. that if "his assertion is not true he, A., will pay B. a certain sum, "and B. promises A. that he will pay A. a certain sum if "A.'s assertion is true."

This is a rough and ready way of stating the mode in which bets were decided by the courts, and of course the form of the supposed contract varied with the circumstances of each case.

When certain games became illegal, bets upon such games were illegal also, and many very curious points came before the judges for decision. At the risk of being accused of digressing, I here introduce one or two speci-

mens of Reports for the sake of their intrinsic quaintness, both of substance and language.

Johnson v. *Samworth.*

" The defendant in consideration the plaintiff would give " to him 5*s*., he would give to the plaintiff 40*s*. if he ever " played at a game called Even and Odd, for money or wine. " Plaintiff avers he gave him 5*s*., and that the defendant " played at the same game for &c., such a day and year, " whence an action accrued, and the plaintiff had a verdict. " It was moved in arrest of judgment that there was no " such play." This was, in fact, the real question on which the defendant thought he should win the bet—what in these days we should call a dodge or trick—but the court decided it on a no doubt unexpected ground. " But " it was allowed, and the court approved of the considera- " tion to restrain young men from gaming." The plaintiff therefore kept his verdict, as may be seen by reference to my Lord Raymond his Reports.

Medcalfe's case.

" A. assumes (promises) to B., in consideration that " J. S. won a game at Butts at one-and-twenty up, that " he will pay to B. 10*l*., and if not, then B. assumes to " pay to A. 50*l*. It is a good mutual consideration." More, 703.

Sutton v. *Jones.*

" A. and B. play at tables, and in consideration the " plaintiff assumed to give the defendant his mare if he

" get five games, the defendant assumes to pay 5*l.* to the
" plaintiff if he win five games.

" It is a good consideration for the hazard, though it be
" an unlawful game." 1 Rol. Abr.

West v. *Sir John Stowell.*

" Action on the case by West against Sir John Stowell.
" Plaintiff declared that the defendant, in consideration the
" plaintiff promised to the defendant that if the defendant
" should win a certain match at shooting, made between
" the Lord Effingham and the defendant, then the plaintiff
" should pay to the defendant 10*l.*, promised to the plain-
" tiff that if the Lord Effingham shall win the same match
" of the defendant, the defendant would pay to the plain-
" tiff 10*l.*; and the Lord Effingham won the match.

" Here the consideration is sufficient, being a reciprocal
" promise; for all the communication ought to be taken
" together. But per Manwood, such a reciprocal promise
" between the parties themselves at the match is sufficient,
" for there is consideration good enough to each, as the
" preparing of the bows and arrows, the riding or coming
" to the place appointed to shoot, the labour in shooting,
" the travel in going up and down between the marks;
" but for the betters by (spectators or by-standers betting
" on the match) there is not any consideration, if the
" better doth not give aim. A cast at dice alters the
" property if the dice be not false: wherefore then is not
" here a reciprocal action? Manwood. At dice the parties
" set down their monies and speak words that do amount
" to a conditional gift. Scilt. If the other party cast such
" a cast he shall have the money." 2 Leon. 154.

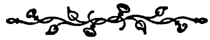
Cases of this nature might be multiplied *ad infinitum.* Actions were tried in the courts to recover money deposited on wagers made in "angels" as to the number of yards in a velvet cloak, wagers on cock-fights, running matches &c., and the most quaint and curious theories were set up and advocated; but I must now return from a past time to more recent days, wagers upon games, legal or illegal, though perfectly lawful, can no longer come before our courts in any form, or under the cloak of any fiction whatever.

During the reign of our present Queen, Art Unions became very popular and successful, but they involved lotteries, and were clearly illegal; yet as they were considered productive of more good than harm, they were rendered legal by the statute 9 & 10 Vict. c. 48, under the definition of "Voluntary associations constituted for the distribution of works of art by lot," provided a royal charter shall have been first obtained, as pointed out in the Act.

The next Act relating to gaming is 16 & 17 Vict. c. 119, directed against an evil which had sprung up and become rampant in a very short time,—I mean the nuisance, for nuisance they are, of betting houses. The facilities which they afforded to young men, and especially clerks and shopboys, to lose their own money and that of their masters were so great, that many cases of embezzlement by such persons occurred in the metropolis, and even country towns were in some degree injuriously affected by these establishments. By the last-mentioned statute betting houses were brought within the provisions

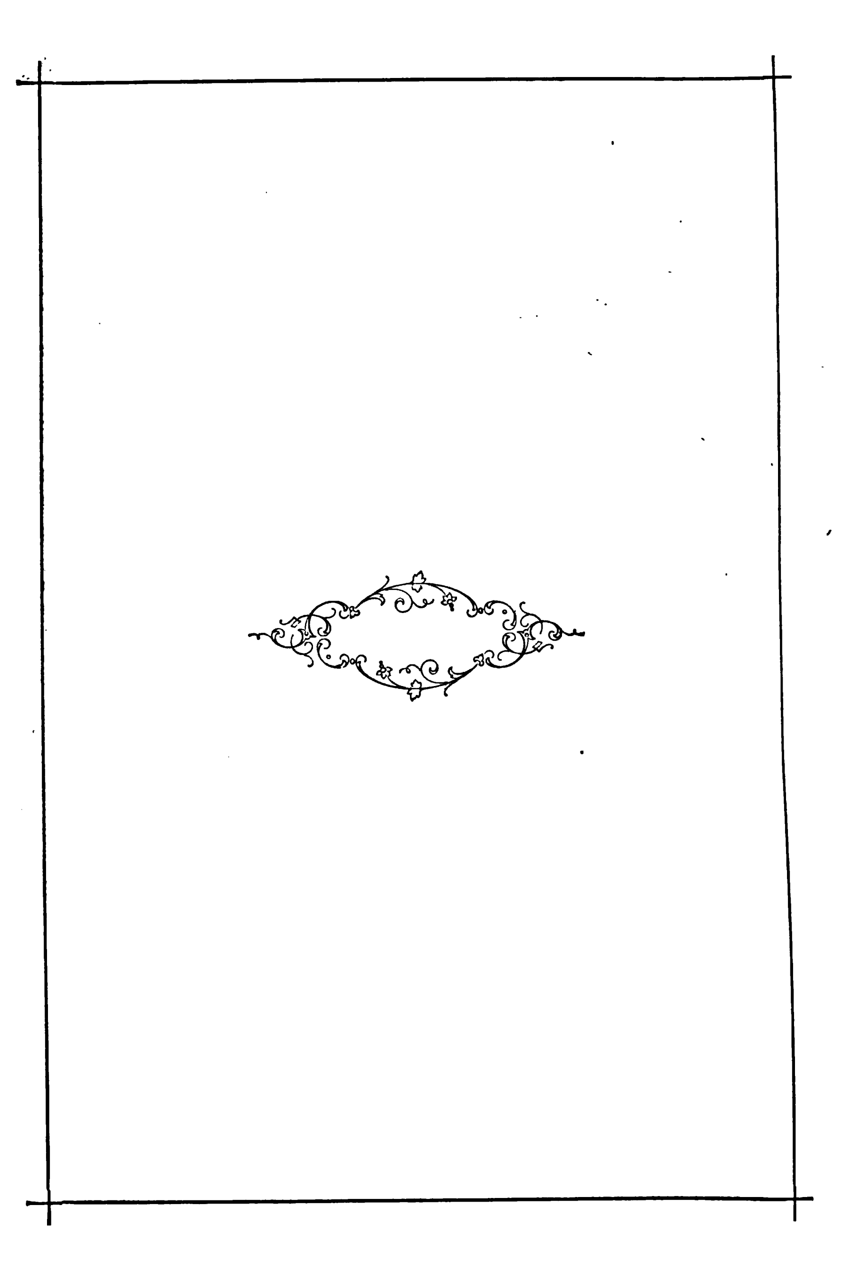
of the 8 & 9 Vict. c. 109, and prohibited as gaming houses; heavy penalties were imposed on the keepers, and the measure was in all respects very stringent.

In the following year was passed the statute 17 & 18 Vict. c. 38: it is intituled "An Act for the suppression of "gaming houses," and was passed in order to obviate the difficulty which the police met in their endeavours to obtain evidence to implicate the keepers of gaming houses, and to facilitate the conviction of offenders against the Acts already in force for the prevention of unlawful gaming. The preamble states, that the keepers of gaming houses are in the habit of fortifying their doors, and opposing the entrance of constables, until all instruments of gambling had been destroyed or concealed, and that no conviction being obtainable, the violation of the law is persisted in; heavy penalties are therefore imposed upon those obstructing the police in their entrance into a suspected house, and such obstruction is to be evidence of the fact of the house being a gaming house. Penalties are also to be imposed upon persons giving a false name and address when apprehended in a gaming house, upon persons keeping gaming houses, and upon persons refusing to be sworn and give evidence, even though by so doing they may criminate themselves—in a word, the Act which came into operation on the 24th July, 1854, is very comprehensive in its provisions, but whether it is successful in effecting the desired object I am unable to say.



CHAPTER VIII.

The last Vagrant Act and a Report of an important Decision upon one of its Clauses.



Chapter VIII.

THE LAST VAGRANT ACT AND A REPORT OF AN IMPORTANT DECISION UPON ONE OF ITS CLAUSES.

I HAVE now arrived at my last statute, and as it is my last and by no means my least important statute I give it, together with the observations and decisions which I have thought it right to make and chronicle, a separate chapter. The Act to which I refer is 31 & 32 Vict. c. 52, and it is entitled "An Act to amend the Act for punish- "ing idle and disorderly persons, and rogues and vaga- "bonds, so far as relates to the use of instruments of "gaming."

The preamble is in these words "Whereas it is expe- "dient to amend an Act passed in the fifth year of the "reign of his Majesty King George the fourth, chapter "eighty-three, intituled, 'An Act for the punishment of "idle and disorderly persons, and rogues and vagabonds, "in that part of Great Britain called England:' be it "enacted as follows:"

It is then by sect. 3 enacted, that "Every person play- "ing or betting by way of wagering or gaming in any "street, road, highway, or other open and public place, "or in any place to which the public have or are per-

" mitted to have access, at or with any table or instru-
" ment of gaming, or any coin, card, token, or other
" article used as an instrument or means of such wagering
" on gaming at any game or pretended game of chance,
" shall be deemed a rogue and vagabond within the true
" intent and meaning of the recited Act, and as such
" may be convicted and punished under the provisions of
" that Act."

The words "table or instrument of gaming, or any " coin, card, token, or other article used as an instru- " ment or means of such wagering or gaming at any " game or pretended game of chance," are so clear and ample that it seems almost impossible to raise a point on their construction. Pennies with a head on each face or a tail on each face, pennies with the normal features of pennies, coins in fact of any kind, cards, roulette boards, &c., &c. all seem to come within the provisions of the Act. However, the ingenuity of man is wonderful, and in the year of our Lord 1870 a machine was invented and put in operation which it was hoped would have the proverbial effect of driving a coach and horses through every statute against gaming. It was an instrument used for the purpose of betting on a race-course, and on the 10th of August, 1870, it was brought to bear on the race-course at Wolverhampton, and there and then, such race-course being a certain open and public place to which the public had access, it was used as an instrument or means of wagering or gaming at a game of chance, contrary, as it was urged, to the statute 31 & 32 Vict. c. 52. So the inspector of the borough police of Wolverhampton thought,

and he accordingly charged the persons using the machine of infringement of the law, and they were eventually convicted by the justices of the borough and sentenced to seven days' imprisonment with hard labour as rogues and vagabonds. Of course they appealed to the court of Queen's Bench, and the appeal was argued on the 3rd of May last on a case stated by the justices.

The case is reported, Law Rep., 6 Q. B. 514, as

"*Tollett and Another*, Appellant, v. *Thomas*, Respondent.

The marginal note is as follows:—

" By 31 & 32 Vict. c. 52, s. 3, any person playing or
" betting in a public place with any table or instrument
" of gaming at any game of chance, is liable to be convicted
" as a rogue and vagabond.

" The appellants were convicted under the above section,
" on evidence from which it appeared that they were the
" proprietors of a machine called a 'pari mutuel.' The
" machine had on it numbers, beside each of which were
" three holes, and behind these holes were figures, which
" by a mechanical contrivance were made to shift on the
" turning of a key, so that any number from 0 to 999
" would be exhibited behind these holes. On the top of
" the machine was the word 'totals,' and beside it were
" holes in which could be exhibited in a similar manner
" figures shifting on the turn of the key. The appellants
" took this machine to a race-course, and appropriated
" each of the numbers to designate a particular horse
" about to run a race. Any person who wished to bet
" on a particular horse deposited with the appellants

" half-a-crown, and received a ticket with the number
" appropriated to the horse; and the appellants by a turn
" of the key altered the figures, increasing the sum
" indicated alongside of that number by one; and the
" same turn of the key increased the figures beside 'total'
" by one. When the race had been run the holders of
" tickets with the number of the winning horse had divided
" among them the amount of all the half-crowns deposited
" less 10 per cent., which the appellants retained as pro-
" prietors of the machine:—Held, that the machine was
" an instrument of gaming within the statute; and that
" the appellants had been rightly convicted."

In the course of the argument several points were raised, as, for instance, that horse racing was not a game of chance. The judgment of the Court, delivered by the Lord Chief Justice of England (Sir A. Cockburn), is so elaborate and exhaustive, and at the same time so interesting, that I make no apology for giving it here in full. It is as follows:—

" This is a case stated for the opinion of this Court by
" two justices who had convicted the appellants under
" statute 31 & 32 Vict. c. 52, s. 3, which enacts that every
" person playing or betting in a public place 'at or with
" any table or instrument of gaming, or any coin, card,
" token or other article used as an instrument or means of
" such wagering *on* gaming, at any game, or pretended
" game of chance,' may be convicted and punished as a
" rogue and vagabond.

" There seems no doubt that the word *on* in this statute
" is, by a clerical error, substituted for '*or*,' and that the
" statute is to be read as if the word was '*or*.'

" The article which was actually used on this occasion
" is not sufficiently described in the case, but it was pro-
" duced in court, and we had the opportunity of personal
" inspection. It was a machine having on it numbers,
" beside each of which were three holes, and behind these
" again figures, which, by a mechanical contrivance, were
" made to shift on the turning of a key, so that any number
" from 0 to 999 could be exhibited behind these holes.
" On the top of the machine was the word 'total,' and
" beside it were holes in which could be exhibited in a
" similar manner figures shifting on the turn of the key.

" The appellants took this machine to the race-course,
" and there appropriated each of the numbers to designate
" a particular horse about to run in a race. Any person
" who wished to bet on a particular horse deposited with
" them half-a-crown, and received a ticket with the number
" appropriated to the horse selected by the better; and
" the appellants, by a turn of the key, altered the figures,
" increasing the sum indicated alongside of that number by
" one, and, as the machine was contrived, increasing by
" the same turn of the key the sum indicated by the figures
" beside the word 'total' by one.

" Thus if, at the beginning, when all the holes were
" filled up by cyphers, the first half-crown was deposited
" in exchange for a ticket bearing the number '1,' the
" twist of the key would change the figures exhibited
" beside number 1 from 000 to 001 and at the same time
" change the figures exhibited beside 'total' so as there
" also to show 1.

" When the race was run, the holders of tickets which

" had on them the number appropriated to the winning
" horse were entitled to divide among them the amount of
" the total, less 10 per cent., which was to be retained by
" the appellants, the proprietors of the machine.

" Thus, with ingenuity worthy to be employed in a
" better cause, it was contrived that each person who was
" induced to bet might see at a glance what was the
" amount of the odds offered if he bet on any particular
" horse; but (and this is material to be observed) the
" state of the odds was liable to be changed before the
" race was run.

" To illustrate what is meant, let us suppose that at
" some particular time the figures opposite 'total' indi-
" cated that 99 half-crowns had been deposited, and the
" figures opposite number 1 showed that, for some reason
" or other, no ticket had been taken out for that horse,
" anyone, seeing and understanding this, would know that
" if he deposited his half-a-crown and took a ticket for
" number 1, thus swelling the total to 100, he would, if
" things remained unaltered till the race was run, and the
" horse designated by number 1 won the race, as holder of
" his ticket receive 90 half-crowns. But he would also
" know that the odds were liable to be altered; for ex-
" ample, if 100 persons subsequently deposited half-crowns
" so as to swell the total to 200, and none took tickets for
" number 1, he would, in the event of number 1 winning,
" receive 180 half-crowns; but if 19 of these new deposi-
" tors took tickets for number 1, he would, in the event of
" number 1 winning, only receive 9 half-crowns; for the
" total would have to be divided between the holders of

" number 1 tickets, by the supposition now 20 in number.
" The person therefore who, by means of this machine, is
" induced to part with his half-crown does so on a specula-
" tion, his chance of remuneration depending on two
" events: one, namely, whether his horse wins, determin-
" ing whether he shall get back anything; the other,
" namely, how many other gamblers shall have deposited
" their half-crowns, and on what tickets, determining how
" much he shall receive in the event of his winning. Over
" neither event could he by any skill or efforts of his own
" exercise any control.

" There is no doubt that what was done was done in a
" public place. The question for our decision is whether
" the machine referred to in the case is an 'instrument of
" wagering or gaming at a game of chance,' within the
" meaning of the Act, 31 & 32 Vict. c. 52, s. 3. This
" again resolves itself into two questions: 1. Is the
" machine an instrument of wagering or gaming? 2. Is
" the game on which the wagering took place under the
" circumstances stated a game of chance?

" On the first question, it was argued, that the instru-
" ment was not an instrument of wagering, inasmuch as
" the wagering took place quite independently of it: the
" use of the machine being confined to the registering of
" the bets made; and that a book or large sheet of paper
" might, though no doubt less conveniently, have been
" made available for the same purpose. This argument,
" though at first sight a specious one, will not in our
" opinion hold. The machine in question is a mechanical
" contrivance for enabling persons, willing to bet on the

"event of a race, to ascertain the state of the bets already "made on the different horses about to run, and to calculate the chances of winning according as they may bet "on any particular horse. There can be no doubt that it "materially assists the parties resorting to it in the operation of betting, and we cannot doubt, therefore, that it "is used as an instrument or means of betting. Whether "some other contrivance might be resorted to which "would not be 'an instrument or means of wagering,' "within the statute, is a question we may have to decide "hereafter, but with which we need not trouble ourselves "now. It is enough to say that the instrument in question is intended to assist persons in wagering, and "undoubtedly has that effect. This being enough, we "think, to bring it within the words, as it certainly is "within the mischief, of the statute.

"The second question is whether the wagering thus "carried on is wagering on a game of chance. It was "urged upon us in the argument that the betting here "being on the event of a horse-race, it could not be considered as wagering on a game of chance, a horse-race "not properly coming within such a definition. It is "unnecessary to determine whether, if this instrument had "been used simply for registration of bets on the events of "a horse-race, the use of it would have been within the "statute. Whether a horse-race be in itself a game of "chance or not, we can entertain no doubt that, if some "additional element of chance be introduced, the wagering "on a horse-race may be converted into a game of chance. "Thus, to use a familiar illustration, a lottery in which

" each individual draws a particular horse, on the success
" of which the winning of the stakes depends, would, we
" cannot doubt, constitute as between the parties to such
" a lottery a game of chance.

" In the present instance, an element of chance is in-
" troduced, which, though not having any reference to the
" main event, namely, the result of the race in the winning
" of a particular horse, is yet essential to making the
" wager laid upon the winning horse profitable to the
" better. The winning of the horse betted upon is of
" course the primary condition of the wager being won.
" But whether the winning of the wager shall be pro-
" ductive of any profit to the winner, and more especially
" what the amount of that profit shall be, depends on the
" state of the betting with reference to the number of bets
" laid on or against the winning horse—a state of things
" fluctuating from one minute to another throughout the
" duration of the betting. Now this being something
" wholly independent of the issue of the race, as well as
" of the will and judgment of the winner, depending, as it
" does, on the will or caprice of the other persons betting,
" is a matter obviously of uncertainty and chance to the
" individual better, more especially in the earlier stages of
" the betting. There being, then, this element of chance
" in the transaction among the parties betting, we think
" it may properly be termed, as amongst them, a game of
" chance.

" We quite agree that, though the case is obviously
" within the mischief contemplated by the statute, we
" ought not unduly to strain the words of the statute in

"order to bring the case within it. But, as here chance "has, as has been explained, a material influence in "determining the result of the betting as a source of gain, "it appears to us that we may properly hold the wagering "in question to have been wagering on a game of chance.

"That being so, as there can be no doubt that the "race-course on which the betting was carried on was a "public place within the meaning of the statute, we are "of opinion that the conviction was right and must be "affirmed."

It is a curious fact that the word "coin" was introduced into 31 & 32 Vict. c. 52, to remedy a defect in the law, it having been decided that halfpence, being Queen's coin of the realm, were not "implements of gaming," and so pitch and toss was held to be a legal pursuit. *Watson* v. *Martin*, 34 L. J., M. C. 50.

CHAPTER IX.

Lotteries.

Chapter IX.

LOTTERIES.

Having found it impossible to treat of lotteries in the chronological form adopted by me in this book, I have thought it best to dedicate a separate chapter to the subject. In this view I am confirmed, because I hope that, from the very nature of such a subject, and owing to the fact that I shall have to introduce a comparatively small amount of pure legal matter, this chapter may be found less tedious than other portions of this work, and even amusing, to those who care little for the "quirks and quid-" dities" of the law. Lotteries, like games, with which indeed they were classed when mentioned in Acts of Parliament, were originally perfectly legal. Having, however, become very prevalent and being thought to work mischief, either to the public or to the revenue of the country, they were prohibited by several Acts of Parliament, to which I shall in the proper place refer.

The first lottery which we read of as having taken place in England was commenced in the year 1569—in the reign of Queen Elizabeth. It is described as "A proposal for " a very rich lottery, general without any blankes, contayn-" ing a great No. of good prizes, as well of redy money

"as of plate and certain sorts of merchandises, having "been valued and prised by the commandement of the "Queene's most excellent majestie's order, to the intent "that such commodities as may arise thereof after the "charges borne may be converted towards the reparations "of the Havens and strength of the realm, and towards "such other publick good workes. The number of lotts "to be four hundred thousand and no more, and every lott "shall be the summe of tenne shillings sterling only and "no more, to be filled by the feast of St. Bartholomew."

Stow says that this lottery was begun to be drawn at the west door of St. Paul's Cathedral on the 11th January, 1569, 11th Eliz., and that the drawing continued incessantly day and night until the 6th of May following. At first it was intended that it should be drawn at Mr. Dericke's the Queen's jeweller, at whose shop the prizes were on view.

This lottery is mentioned in Maitland's "London" and in the Gentleman's Magazine, 1778; and here, lest I should be accused of plagiarism without acknowledgment, I may remark that in compiling this chapter I have been materially assisted by the works of Mr. Hone, a man whose talent for picking up interesting information on almost every subject was in his time unrivalled.

In 1586, 28 Eliz. "A lotterie of marvellous rich and "beautifull armour was begunne to be drawn at London in "S. Paule's churchyard at the great west gate (an house "of timber and boord being there erected for that pur- "pose) on St. Peter's day in the morning, which lotterie "continued in drawing day and night for the space of two

" or three daies." This is said by Stow to have been the second lottery drawn in England.

In 1619, 16 James I., a lottery was held at Reading for the purpose of raising a sum of money to be lent on certain conditions to six poor tradesmen, one of these conditions was that they should not keep either inn or tavern.

In 1630, 6 Charles I., the king granted a special license to Sir Edward Stradling and John Lyde to hold a lottery or lotteries in aid of a project to bring water from Hodsden to London; but for this sole privilege of bringing the water in aqueducts they were to pay his majesty 4,000*l.* a-year.

In 1653, during the Commonwealth, the Grocers' Company held a lottery, or at all events advertised one to be held, at their hall for some object connected with their property in Ireland.

In the reign of Charles the Second, as may be easily conceived, lotteries became very rife and letters-patent were granted very freely. The favourite excuse seems to have been the relief of poor and indigent royalists. The most famous lottery seems to have been the Royal Oak Lottery; but amongst the poorer classes twelvepenny lotteries were much in vogue.

A great plate lottery was held at the sign of the "Mermaid," over against the mews, in April, 1669, at which the King, the Duke of York, afterwards James II., and many of the nobility were present, and Mr. Phillips, who kept the "Mermaid," advertised that those who wished for letters-patent to establish lotteries for indigent officers

might apply to him. The articles which furnished prizes were of every conceivable kind—plate, books, and especially valuable bibles, advowsons, land, jewellery, &c., &c. In 1683, Prince Rupert having died in reduced circumstances, a lottery of his jewels was advertised in the Gazette. By this time, however, as a matter of course, some cheating had taken place, and the public would have nothing to do with this lottery unless the king himself would attend and see all fair, and unless Mr. Francis Child, the goldsmith at Temple Bar, would be answerable for the due delivery of the prizes. Accordingly, in the London Gazette of the 1st October, 1683, the following notice appeared:—

" These are to give notice, that the jewels of his late " Royal Highness Prince Rupert had been particularly " valued and appraised by Mr. Isaac Legouch, Mr. Chris- " topher Rosse and Mr. Richard Beauvoir, jewellers, the " whole amounting to twenty thousand pounds, and will " be sold by way of lottery, each lot to be five pounds. " The biggest prize will be a great pearl necklace, valued " at 8,000*l.*, and none less than 100*l.* A printed particular " of the said appraisement, with their division into lots, will " be delivered gratis by Mr. Francis Child at Temple Bar, " London, into whose hands such as are willing to be " adventurers are desired to pay their money on or before " the first day of November next. As soon as the whole " sum is paid in, a short day will be appointed (which it " is hoped will be before Christmas), and notified in the " *Gazette*, for the drawing thereof, which will be done in " his Majesty's presence, who is pleased to declare that *he*

"*himself will see all the prizes put in amongst the blanks,*
" and that the whole will be managed with equity and
" fairness, nothing being intended but the sale of the said
" jewels at a moderate value. And it is further notified
" for the satisfaction of all as shall be adventurers, that
" the said Mr. Child shall and will stand obliged to each
" of them for their several adventures. And that each
" adventurer shall receive their money back if the said
" lottery be not drawn and finished before the first day of
" February next."

A subsequent notice says, " that the king will probably
" to-morrow, in the Banquetting-house, see all the blanks
" told over, that they may not exceed their number; and
" that the paper on which the prizes are to be written shall
" be rollen up in his presence; and that a child, appointed
" either by his Majesty or the adventurers, shall draw the
" prizes."

Letters-patent were from time to time renewed in cases in which the object was to relieve indigent Loyalists or Royalists; and from the Gazette of October 11, 1675, it appears that those dated June 19, and December 17, 1674, were granted for thirteen years to come under the designation of " lotteries invented or to be invented to several
" truly loyal and indigent officers in consideration of their
" many faithful services and sufferings, with prohibition to
" all others to use or set up the said lotteries." The indigent officers, however, might give deputations.

And now the flood of lotteries became overwhelming. Penny lotteries, lucky adventures, Fortunatus lotteries, " marble board," the Whimsey board, the figure board, the

Wyre board, and lotteries bearing all possible names, and set up for all kinds of purposes. The main purpose, however, seems to have been the extracting money from speculative gamblers.

Hone says that the Royal Oak Lottery, as the rival, if not the parent of the various other demoralising schemes, obtained the largest share of the odium which was naturally provoked amongst reasonable men.

Private and cheating lotteries had now become so general, not only in London but throughout England, and people, especially servants and even children, were defrauded to such an extent that the legislature was forced to interfere, and the Act intituled 10 & 11 Will. III. c. 17, was passed avowedly with the object of suppressing lotteries, "even although they might be set up under "colour of patents or grants under the great seal." In the preamble of this Act it is boldly stated that such grants or patents "are against the common good, welfare and "peace of the kingdom, and are void and against law." The proprietors of such lotteries were accordingly forbidden to carry them on under a penalty of 500*l.*, and the fine to be inflicted upon each "adventurer" was fixed at 20*l.*

All to no purpose; lotteries flourished, and other statutes were launched against them from time to time, as I shall show, for more than 100 years with none effect. In the space of two months, for a lottery at Mercers' Hall, 1,500,000*l.* was subscribed, a sum which, considering the value of money in those days, must be deemed absolutely fabulous. The newspapers of the day teemed with adver-

tisements of lotteries, and any adventurer who could scrape together a few articles of slight value, endeavoured to dispose of them in this way. Goods of every description were turned into prizes, neckcloths, snuff-boxes, tooth-pick cases, linen, muslin and plate. The prices of the tickets were as low as sixpence, and gambling prevailed in small lotteries under the designation of sales of gloves, fans and wares of every sort. This state of things became absolutely intolerable, for it may well be conceived that the public were cheated in many ways, and by every possible contrivance. We find, therefore, that in the 10th year of the reign of Queen Anne an Act was passed subjecting the keepers of these lotteries to a penalty of 500*l.*, and in 1716, by another statute, all lotteries and undertakings resembling lotteries, or founded on the State lottery, were declared illegal and forbidden under a penalty of 100*l.* over and above the penalties imposed by previous Acts. (See "Anderson's History of Commerce," in which will be found many curious details relating to lotteries.) In May, 1715, a year previous to the passing of the last-mentioned Act, the proprietors of Sion Gardens advertised a very curious scheme for disposing of the deer in their park. They appointed the afternoons of Mondays, Thursdays and Saturdays for killing the animals. The public were admitted to witness the operation at a shilling a head, but those who took tickets to the amount of from 4 to 10 shillings were entitled to different parts of the deer. The quantity killed was divided into sixteen lots, and the first choice depended on the numbers on the tickets. A ten shilling ticket holder was entitled to a fillet, an eight

shilling ticket holder to a shoulder and so on. I have not been able to discover the exact mode in which the details of this *quasi* lottery were managed, but no doubt chance came in as an ingredient in the transaction.

In the 9th year of the reign of George II., Parliament passed an Act for building Westminster Bridge by a lottery, and subsequently other lotteries were authorized for its completion. By the 12 Geo. 2, c. 28, lotteries were again attacked. The first section describes at some length the object of the statute, and as it may be interesting to certain of my readers I give a portion of it *verbatim*. It provided:—

"That if any person or persons shall, after the 24th "day of June, 1739, erect, set up, continue or keep any "office or place under the denomination of a sale or sales "of houses, land, advowsons, presentations to livings, "plate, jewels, ships, goods or other things by way of "lottery, or by lots, tickets, numbers or figures, cards, or "dice, or shall make, print, advertise or publish, or cause "to be made, printed, advertised, or published, proposals "or schemes for advancing small sums of money by several "persons amounting in the whole to large sums, to be "divided among them by chances of the prizes in some "public lottery or lotteries established or allowed by Act "of Parliament, or shall deliver out, or cause or procure "to be delivered out tickets to the persons advancing such "sums, to entitle them to a share of the money so ad- "vanced according to such proposals or schemes; or shall "expose to sale any houses, lands, advowsons, presenta- "tions to livings, plate, jewels, ships, or other goods by

" any game, method or device whatsoever depending upon
" or to be determined by any lot or drawing, whether it
" be out of a box or wheel, or by cards or dice, or by any
" machine, engine or device of chance of any kind whatso-
" ever, such person or persons, and every or either of them,
" shall upon being convicted thereof, before any one jus-
" tice of the peace for any county, riding or division, or
" before the mayor or other justice or justices of the peace
" for any city or town corporate, upon the oath or oaths
" of one or more credible witness or witnesses (which said
" oaths the said justices of the peace and mayor are hereby
" authorized, empowered and required to administer), or
" upon the view of such justice or justices, or the mayor,
" justice or justices for any city or town corporate, or on
" the confession of the party or parties accused, shall
" forfeit and lose the sum of two hundred pounds, to be
" levied by distress and sale of the offender's goods, by
" warrant under the hands and seals of one or more jus-
" tice or justices of the peace of such county, riding,
" division, city or town where the offence shall be com-
" mitted."

By the second section certain games were declared to be lotteries, but these have been alluded to and described in a previous portion of this work, see *ante*, pp. 48 and 49.

By sect. 3 it was enacted,

" That all and every person and persons who shall be
" adventurers in any of the said games, lottery or lotteries,
" sale or sales; or shall play, set at, stake or punt at
" either of the said games of the ace of hearts, pharaoh,
" basset and hazard, and shall be thereof convicted in

" such manner and form as in and by this Act is prescribed;
" every such person or persons shall forfeit and lose the
" sum of fifty pounds, to be sued for and recovered as
" aforesaid."

One would have thought that the effect of all these statutes, inflicting such heavy penalties, in some cases cumulative, would have had the effect of suppressing private lotteries called "Little-goes," especially as we find that they were by no means allowed to remain dead letters, as appears from reports of actions tried before Lord Mansfield and other learned judges of the day. Such, however, was not the case. State lotteries flourished; in the years 1778, 1779 and 1782, rules were laid down by Parliament and Acts passed for the regulation of lottery offices, and the conduct of those who kept them; and, it is almost needless to remark that, so long as lotteries of any kind were permitted, the temptation to make money fairly or unfairly, legally or illegally by this species of gambling was far too great to be resisted, and so other than state lotteries flourished. The mania extended even to India, for I find that a scheme was advertised in a Calcutta newspaper dated September 3, 1818, for raffling "six fair pretty young ladies IMPORTED FROM EUROPE, "having roses of health blooming in their cheeks, and joy "sparkling in their eyes, possessing amiable manners, and "highly accomplished, whom the most indifferent cannot "behold without expressions of rapture, twelve tickets at "twelve rupees each." Possibly this was an advertisement inserted by way of what now would be termed "a shave" or joke, but I give it for what it is worth.

An interesting book might be compiled from the anecdotes and stories with which the newspapers and other publications overflowed in the palmy days of lotteries, showing how one man was lucky, another unlucky, how beggars became rich, and how ragged boys from the street on the turn of the wheel were raised high above their previous state of poverty. The advertisements in prose and doggrel verse became a literature by itself, and the squibs and epigrams of the day were tinged with a lottery colour, and flavoured with a lottery taste almost unintelligible in these virtuous times. An account of the different modes in which lotteries were drawn, the instruments used, the precautions against unfairness, &c. would be interesting, but all out of place in this little Work.

The tickets were drawn from the wheel by Bluecoat boys, and it is a fact, that an order was issued from the Lords of his Majesty's Treasury, that the managers on duty should see that "the bosoms and sleeves of his coat "be closely buttoned and his pockets sewed up, that he "shall keep his left hand in his girdle behind him and his "right hand open with his fingers extended," together with other precautions calculated to render cheating by the concealment of tickets or otherwise impossible. When it is stated as a fact that poor medical practitioners used constantly to attend in Guildhall when a lottery was drawn to be ready to let blood in cases where the sudden proclaiming of the fate of tickets in the hearing of the holders was found to have an overpowering effect, I think it will be admitted that it was high time to put an end to these exciting but deleterious games.

Incredible efforts were made to postpone the evil day, but in vain, and on Wednesday the 18th of October, 1826, the last state lottery was drawn. During the summer of that year the lottery office keepers almost incessantly plied men, women, and children throughout the United Kingdom with petitions that they would "make a fortune "in the last lottery that can be drawn." Men paraded the streets with large placards on poles or pasted on their backs announcing the imminent death of all lotteries. Bills containing the same information covered the walls, were thrown down areas and thrust into the hands of passengers along the street. Prices of tickets were said to be rising, and in a word the inhabitants of the great metropolis were in a state of chronic ferment. One of the most important of the "contractors" in this last lottery was a man whose name was or purported to be BISH. He organized processions of fantastically attired men, bands of music, vehicles outrageous in size and gorgeous in colour. He had ballads (of some of which I am credibly informed the late Sam. Lover was the author) headed by rough woodcuts printed and circulated, and advertisements of every sort and kind disseminated, all having the object of informing the public that the last lottery was about to be drawn, and that BISH of 4, Cornhill, and 9, Charing Cross, was the only man with whom they could safely deal. This was the system pursued by all lottery contractors, but *Bish* we find out Heroded Herod in this the last state lottery. Although it was said that shares in the last lottery went up to a premium, there seems considerable doubt whether in fact they were not arbitrarily raised, and whether in truth

many tickets did not remain in the hands of speculators unsold to the last. However this may be, lotteries in England expired on the 18th October, 1826. The fact was announced in the daily newspapers in the following terms:—

" STATE LOTTERY.

" Yesterday afternoon, at about half-past six o'clock, that " old servant of the state, the lottery, breathed its last, " having for a long period of years, ever since the days of " Queen Anne, contributed largely towards the public re- " venue of the country. This event took place at Cooper's " Hall, Basinghall Street; and such was the anxiety on the " part of the public to witness the last drawing of the lot- " tery, that great numbers of persons were attracted to the " spot, independently of those who had an interest in the " proceedings. The gallery of Cooper's Hall was crowded " to excess, long before the period fixed for the drawing " (five o'clock), and the utmost anxiety was felt by those " who had shares in the lottery for the arrival of the ap- " pointed hour. The annihilation of lotteries, it will be " recollected was determined on in the session of parliament " before last; and thus a source of revenue bringing into the " treasury the sums of 250,000*l.* and 300,000*l.* per annum " will be dried up. This determination on the part of the " legislature is hailed by far the greatest portion of the " public with joy, as it will put an end to a system which " many believe to have fostered and encouraged the late " speculations, the effects of which have been and are still " severely felt. A deficiency in the public revenue to the

"extent of 250,000*l.*, annually, will however be the conse-
"quence of the annihilation of lotteries, and it must remain
"for those who have strenuously supported the putting a
"stop to lotteries to provide for the deficiency." See
Hone's Every-day Book, vol. 2, 1502.

This is certainly one way of looking at the matter; but Charles Lamb puts the abolition of lotteries in another and very ingenious point of view, which as like all that he has ever written it is most clever and amusing, I lay before my readers. Writing in "The New Monthly Magazine" under his well known *nom de plume* of Elia, he says:—
"The true mental epicure always purchased his ticket
"early, and postponed inquiry into its fate to the last
"possible moment, during the whole of which intervening
"period he had an imaginary twenty thousand locked up
"in his desk. And was not this well worth all the
"money? Who would scruple to give twenty pounds
"interest for even the ideal enjoyment of as many
"thousands during two or three months? '*Crede quod*
"*habes, et habes*,' and the usufruct of such a capital is
"surely not dear at such a price. Some years ago a
"gentleman, in passing along Cheapside, saw the figures
"1,069, of which number he was the sole proprietor,
"flaming on the window of a lottery office as a capital
"prize. Somewhat flurried by this discovery not less
"welcome than unexpected, he resolved to walk round
"St. Paul's that he might consider in what way to com-
"municate the happy tidings to his wife and family; but
"upon repassing the shop he observed that the number
"was altered to 10,069; and, upon inquiry, had the mor-

" tification to learn that his ticket was blank, and had
" only been stuck up in the window by a mistake of the
" clerk. This effectually calmed his agitation; but he
" always speaks of himself as having once possessed twenty
" thousand pounds, and maintains that his ten minutes
" walk round St. Paul's was worth ten times the pur-
" chase-money of the ticket. A prize thus obtained has,
" moreover, this special advantage; it is beyond the
" reach of fate, it cannot be squandered, bankruptcy
" cannot lay seige to it, friends cannot pull it down, nor
" enemies blow it up; it bears a charmed life, and none
" of woman-born can break its integrity even by the
" dissipation of a single fraction. Show me the property
" in these perilous times that is equally compact and im-
" pregnable. We can no longer become enriched for a
" quarter of an hour; we can no longer succeed in such
" splendid failures; all our chances of making such a
" miss have vanished with the last of the lotteries.

" Life will now become a flat, prosaic routine matter-
" of-fact; and sleep itself, erst so prolific of numerical
" configuration and mysterious stimulants to lottery ad-
" venture, will be disfurnished of its figures and figments.
" People will cease to harp upon the one lucky number
" suggested in a dream, and which forms the exception,
" while they are scrupulously silent upon the ten thousand
" falsified dreams which constitute the rule. Morpheus
" will stifle Cocker with a handful of poppies, and our
" pillows will be no longer haunted by the book of num-
" bers.

" And who, too, shall maintain the art and mystery of

"puffing in all its pristine glory when the lottery pro-
"fessors shall have abandoned its cultivation? They
"were the first, as they will assuredly be the last, who
"fully developed the resources of that ingenious art;
"who cajoled and decoyed the most suspicious and wary
"reader into a perusal of their advertisements, by devices
"of endless variety and cunning; who baited their lurk-
"ing schemes with midnight murders, ghost stories, crim.-
"cons., bon-mots, balloons, dreadful catastrophes, and
"every diversity of joy and sorrow to catch newspaper
"gudgeons. Ought not such talents to be encouraged?
"Verily the Abolitionists have much to answer for?"

I do not think I can finally dismiss my subject without transcribing a composition which appeared contemporaneously with the so-called "Death of the Lottery," in the following form and communicated to Mr. Hone, and printed in his Every-day Book, November 15, 1826:—

Epitaph.

In Memory of

THE STATE LOTTERY,

the last of a long line,

whose origin in England commenced in the year 1569, which,

after a series of tedious complaints,

EXPIRED

on the

18th day of October, 1826.

During a period of 257 years, the family flourished under the powerful
protection of the
British Parliament;
the Minister of the day continuing to give them his support
for the improvement of the Revenue.
As they increased, it was found that their continuance corrupted the
morals, and encouraged a spirit
of Speculation and Gambling among the lower classes of
the people; thousands of whom fell victims to their insinuating
and tempting allurements.
Many philanthropic individuals
in the Senate,
at various times for a series of years, pointed out their baneful influence
without effect,
His Majesty's Ministers
still affording them their countenance and protection.
The British Parliament
being at length convinced of their mischievous tendency,
HIS MAJESTY GEORGE IV.
on the 9th July, 1823,
pronounced sentence of condemnation on the whole race;
from which time they were almost neglected by the British Public.
Very great efforts
were made by the partisans and friends of the family
to excite
the public feeling in favour of the last of the race,
in vain!
It continued to linger out the few remaining
moments of its existence without attention or sympathy, and finally
terminated its career unregretted by any
Virtuous Mind.

The 9th July, 1823, was the date of the royal assent to the Act for the suppression of State lotteries, and I may here remark that, however mischievous these State lotteries may have been, they were strictly legal, and, as a rule, held for the purpose of increasing the revenue.

The Acts which from time to time were passed to prohibit other lotteries were therefore passed for the purpose of preventing any interference with the State lotteries, threatened by schemes called "Little-goes," which may be described as little lotteries on the plan of the great State lotteries, and drawn in the same manner.

There were generally five or six "little-goes" in the year, and they were actually set up and conducted by two or three of the licensed lottery office keepers.

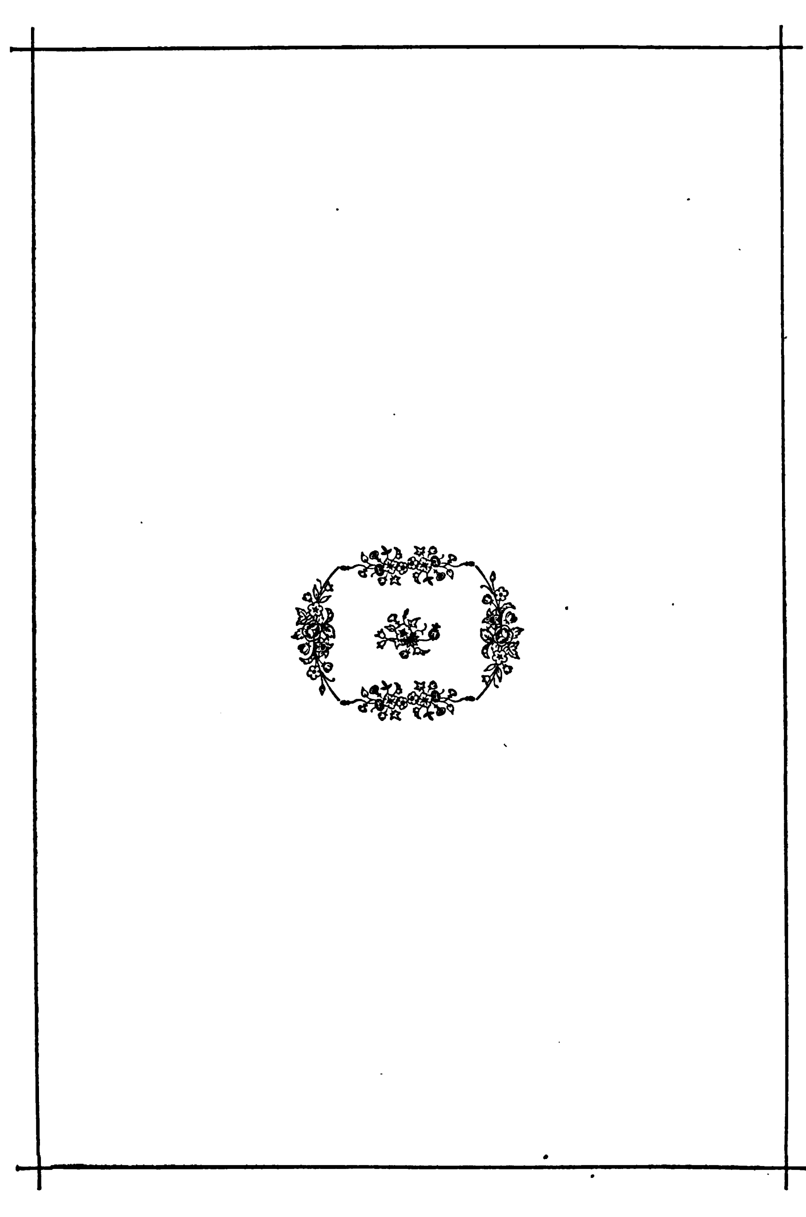
The State lottery was the parent of these "little-goes." Persons who had not patience to wait till another State lottery, gambled in the meantime in a little-go, and a little-go was never heard of during the State lotteries. This appears from the report of a committee of the House of Commons on lotteries in the year 1808.

Much more might be written on this interesting subject, but as this is a mere sketch, I must not lay myself open to the accusation of having attempted to write a complete history of lotteries and of having failed.

In the year 1826 the State lottery in England came to an end. It added to the revenue just as on the Continent lotteries are or were, until very recent times, profitable to the governments of the countries which authorized them as sources of revenue.

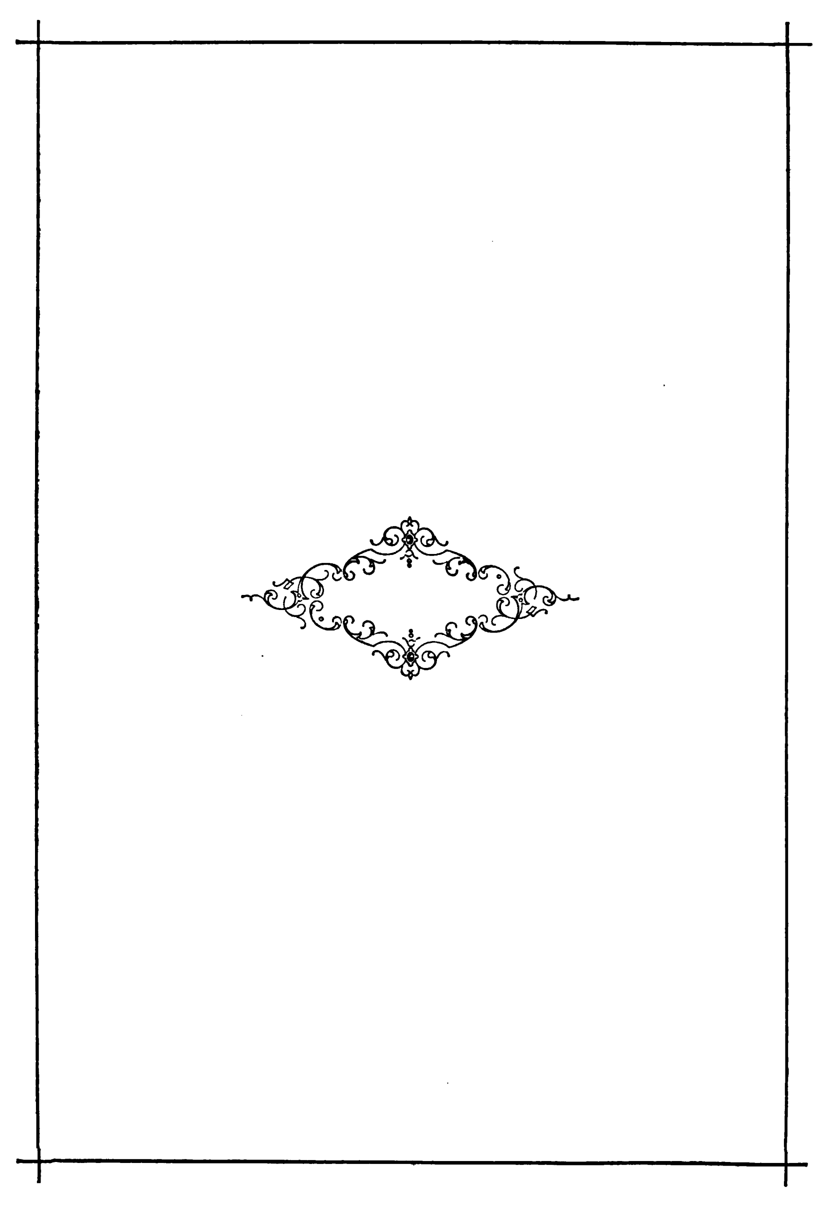
In Great Britain lotteries for State purposes are now at an end,—probably for ever.

On lotteries from the year 1826 to the present time I have little to say. In the present reign three Acts were passed, 7 & 8 Vict. c. 109, "to indemnify persons "connected with Art Unions and others against penalties;" 8 & 9 Vict. c. 74, prohibiting the advertising of lotteries; and 9 & 10 Vict. c. 48, for regulating Art Union lotteries, —with the exception of which all schemes of this nature are illegal.



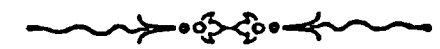
CHAPTER X.

Being a Summary of the Contents of the preceding Chapters.



Chapter X. (and last).

BEING A SUMMARY OF THE CONTENTS OF THE PRECEDING CHAPTERS.



I have now almost finished my task, and by way of concluding it I now present my patient readers with a short summary of the law as it was and as it now is relating to games and gaming.

Firstly, I may repeat that there is nothing in the abstract illegal in gaming, and that all the prohibitions against it are the work of statutes. Excessive gaming was looked upon with jealous eyes, and cheating was unlawful at common law, as it now is by statute.

Certain games were forbidden by some old Acts passed in the days of the Edwards (notably in the 17th year of the reign of King Edward IV.); but for all useful purposes we need go no further back than the reign of Henry VIII., who, by the statute passed in the thirty-third year of his reign, prohibited tables, tennis, dice, cards, bowls, clash, quoits, loggats, and other unlawful games, when played in certain places, at certain times, and by certain persons. This Act was passed for the purpose of encouraging the practice of artillery—in other words, bows and arrows; and, for further information, my readers are referred to my earlier chapters.

By statutes passed in the reigns of William III., Queen

Anne, and George I., lotteries were forbidden, and by 2 Geo. II. c. 28, the provisions of those Acts were rendered more effectual.

By 12 Geo. II. c. 28, lotteries were again attacked, and the games of ace of hearts, pharaoh, bassett and hazard, were placed on the same footing with lotteries, and the penalty imposed upon "the adventurers" was fixed at 50*l.* By 13 Geo. II. c. 19, the game of passage was prohibited, and "all games invented, or to be invented, with one or "more die or dice," backgammon, and games played on a backgammon board, being excepted. By 18 Geo. II. c. 34, the game of roulet or roly-poly was forbidden. Then came the Act prohibiting playing or betting in any street, highway, or public place with any table or instrument of gaming at any game of chance. The next Act is 8 & 9 Vict. c. 109, legalising games of skill, imposing penalties on the keepers of gaming houses, abolishing all actions on wagers and gaming contracts, and making cheating a misdemeanor. By this Act justices may license billiard tables, and a complete revolution in the law of games and gaming is effected. Art Unions are by a special statute excepted from the operation of the laws against lotteries. Two Acts for the suppression of betting and gaming houses were passed in two successive years; they are 16 & 17 Vict. c. 119, and 17 & 18 Vict. c. 38.

The last Act passed relating to my subject is the Vagrant Act, 31 & 32 Vict. c. 52. This statute prohibited playing or betting with any instrument of gaming in a public place, and is fully referred to in my eighth

chapter, in which I have given at some length a very important decision on the construction of the Act.

Under these statutes, therefore, which, with all the others relating to my subject, have been commented on in the preceding pages, the question now finally to be answered is—What games are legal and what illegal? Having very carefully considered this question, I have drawn up the following list, by reference to which my readers may see at a glance what my view of the matter is, at all events so far as modern games popular at the present time are concerned:—

Lawful Games and Sports.

Backgammon.	Foot Ball.
Bagatelle.	Foot Races.
Billiards.	Golf.
Boat Races.	Knur and Spell.
Bowls.	Putting the Stone.
Chess.	Quoits.
Cricket.	Rackets.
Croquet.	Rowing.
Curling.	Skittles.
Dominoes.	Tennis.
Draughts.	Whist.
Fives.	Wrestling.

To these may be added all games of skill, athletic sports and pastimes, and games at cards, excepting those mentioned below. I have some difficulty in deciding whether or not boxing, cudgel-playing, and single-stick are lawful games. Perhaps much will depend on the mode in which

these contests are conducted and the degree of violence used. A boxing match in which great good temper is displayed, and patent pneumatic gloves used (provided you do not let the wind out of them) might be entirely unobjectionable; but a glove fight with the hard, old-fashioned mittens might be dangerous, and so become illegal. However, the games enumerated in the above list are now legal, subject always to the law relating to licenses of billiard-rooms and public houses. The statute 8 & 9 Vict. c. 109, having effected so great a revolution, one wonders why it did not proceed a little further, and legalise all games neither dangerous nor immoral. For my part I cannot see why two people should not in their own private room play at games with dice or cards, or any implements whatsoever. I can conceive the propriety of prohibiting public gambling, although it really is treating grown men like children; but I cannot imagine what good can accrue from forbidding gaming in a man's own parlour, where no bad example can be set, no one's comfort interfered with, and no harm done to any but the players themselves. However, the following games are absolutely

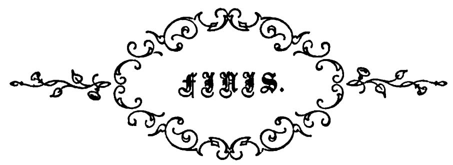
UNLAWFUL GAMES.

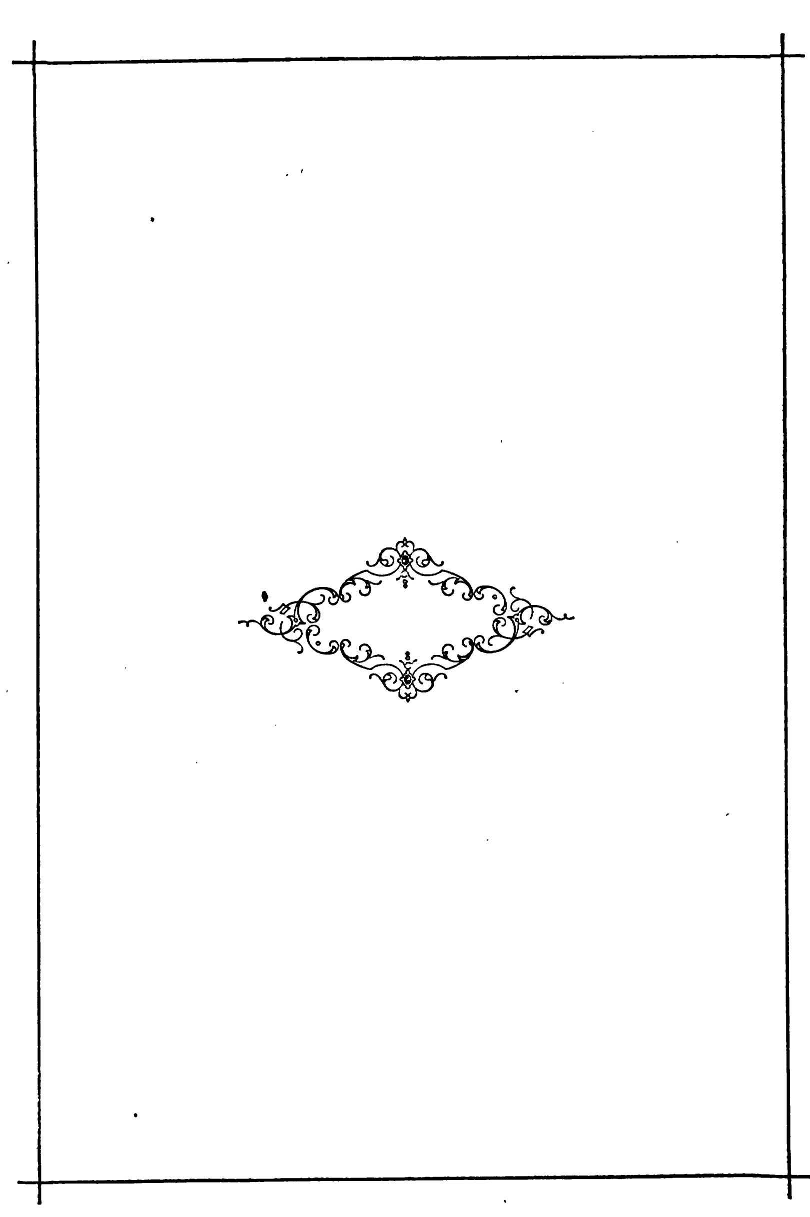
Ace of Hearts.
Basset.
Dice (except Backgammon).
Hazard.
Passage.
Lotteries (except Art Union Lotteries).
Pharaoh.
Roulet, or Roly-poly.

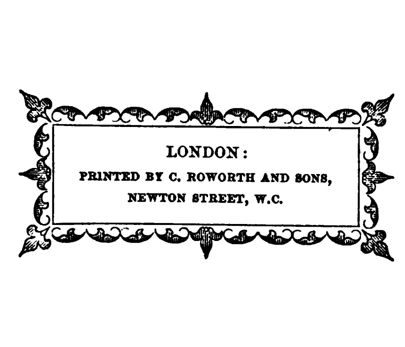
Such being the case, whatever we may think of the propriety of forbidding any games innocent in the abstract, we must abstain from the temptation of playing at those above mentioned. Cockfighting, bear and bull baiting, and all games which a man's natural sense of what is right tells him are objectionable, are illegal, and cheating is illegal, whatever be the game.

I am fully aware that it has been decided that a horse race is a game, and the subject of horse racing might have fairly been introduced into this work. The same may be said of betting, so intimately interwoven as it is in horse racing. But these are matters of such importance, involving as they do serious and lengthy legal disquisitions, that, independently of the fact that they have been ably handled by other authors, I may be permitted to exclude them from what is and is meant to be a mere sketchy performance.

And now my task is over. I have endeavoured to please and instruct both lawyer and layman. To myself the compilation of this "litel boke" has been a labour of love; and if my readers derive one-half the pleasure from reading that I have experienced in writing it, my object will be fully attained.



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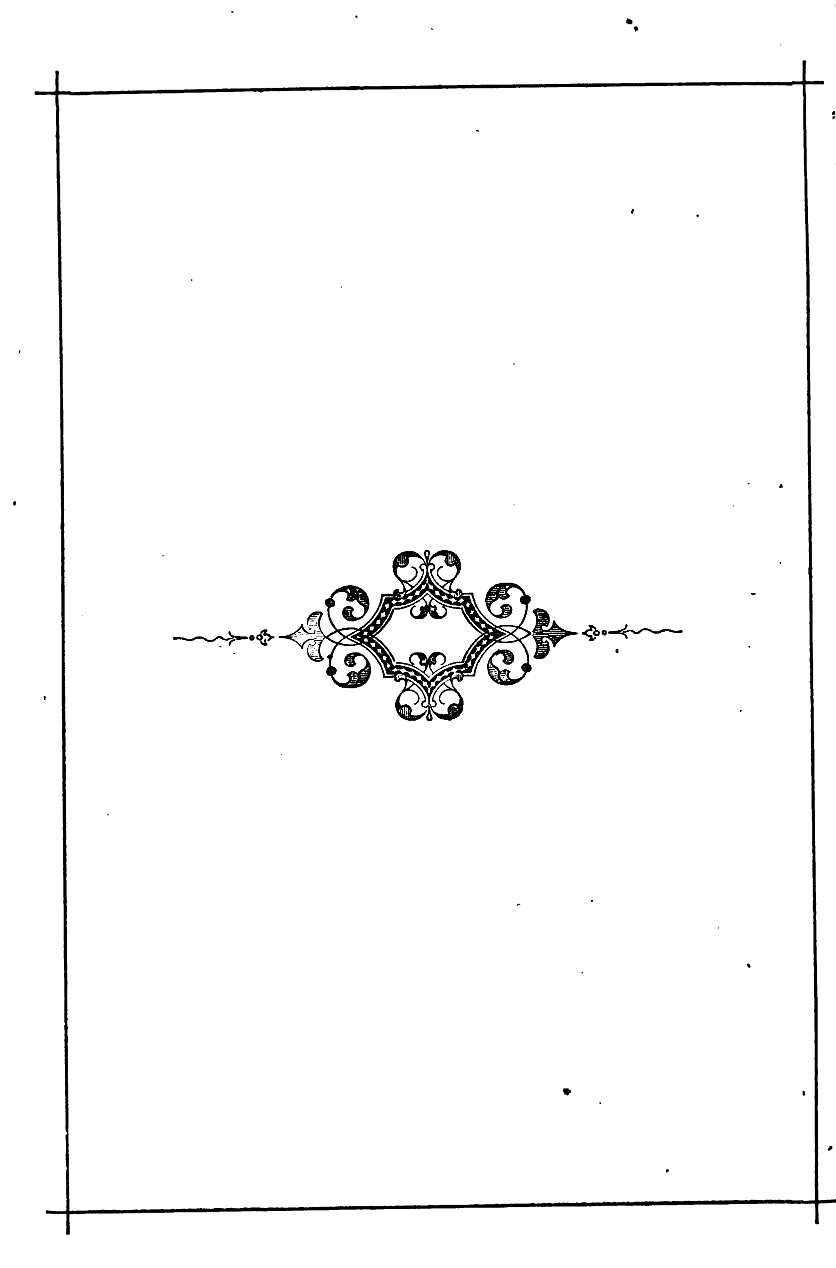

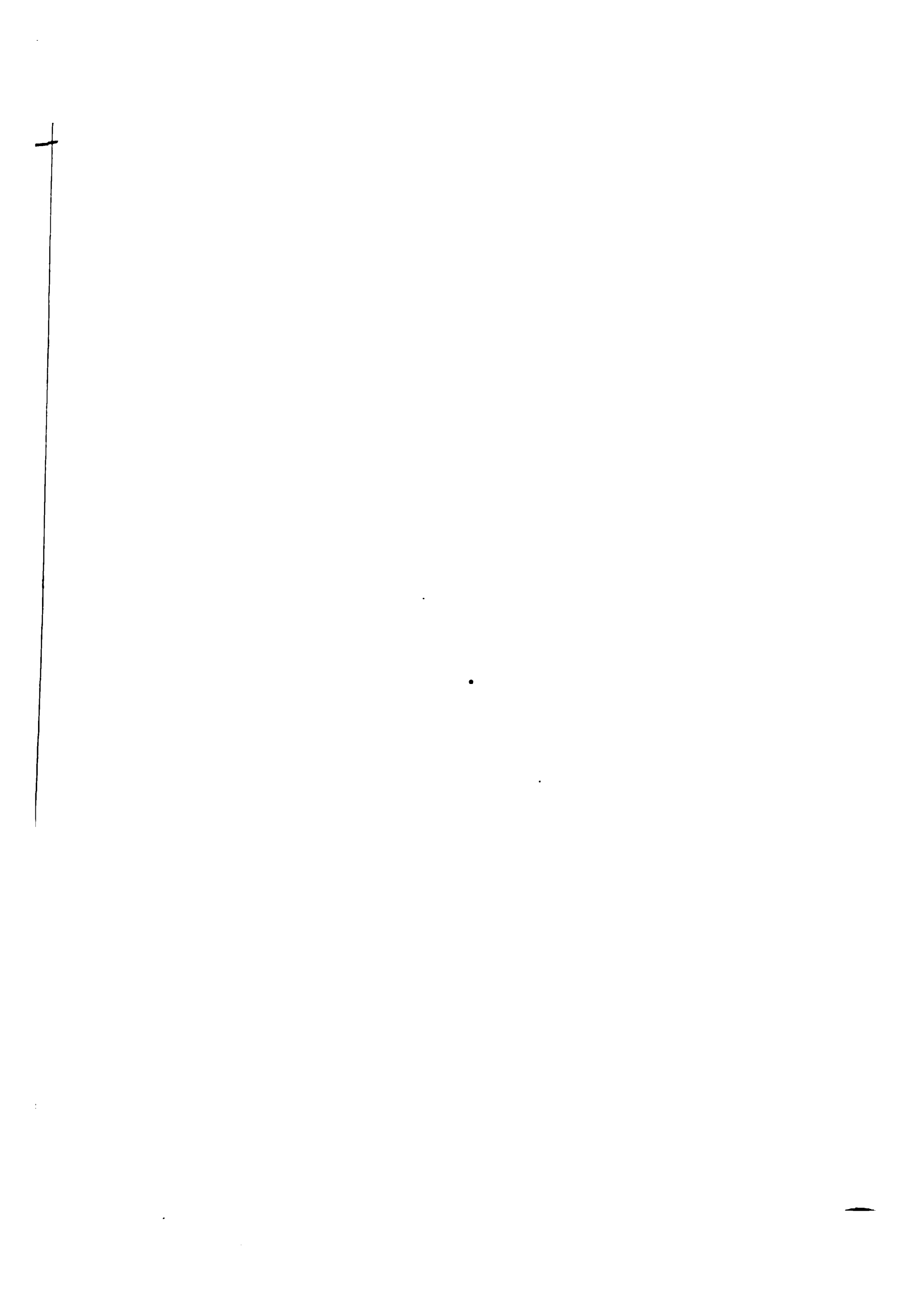

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